

## **METROPOLITAN AREA PLANNING COMMISSION**

### **MINUTES**

May 25, 2000

The regular meeting of the Metropolitan Area Planning Commission was held Thursday, May 25, 2000 at 1:00 p.m., in the Planning Department Conference Room, 10<sup>th</sup> Floor, City Hall, 455 North Main Street, Wichita, Kansas. The following members were present: Frank Garofalo, Chair; Chris Carraher; Bill Johnson, Richard Lopez; John W. McKay, Jr., Jerry Michaelis; Susan Osborne-Howes; George Platt; Harold Warner, Jr.; and Ray Warren. James Barafeld, Bud Hentzen and Deanna Wheeler were not present. Staff members present were: Marvin Krout, Secretary; Dale Miller, Assistant Secretary; Donna Goltry, Principal Planner; Scott Knebel, Senior Planner; Lisa Van de Water, Senior Planner; Barry Carroll, Associate Planner, and Karen Wolf, Recording Secretary.

#### **1. Approval of MAPC minutes for March 16, 2000 and March 30, 2000**

**GAROFALO** "Are there any changes or corrections?"

**MOTION:** That the minutes for March 16, 2000 and March 30, 2000 be approved as submitted.

**LOPEZ** moved, **WARREN** seconded the motion, and it carried unanimously (12-0).

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#### **2. Approving the Transportation Improvement Program (2000-2005), including prioritizing Federally funded projects (STP/CMAQ/BRIDGE PROGRAM), and the MPO's annual certification of the Transportation Planning Process.**

**JAMSHEED MEHTA**, Planning staff, gave the following report on the Transportation Improvement Program. Councilmember Joe Pisciotte and Steve Lackey, Public Works Director, were present to offer comments and to answer questions.

The Federal Transportation Planning Program requires all urban areas with greater than 50,000 population to have a Metropolitan Planning Organization (MPO). In the Wichita Metropolitan Area, the Planning Commission have been designated by the US and Kansas Department of Transportation as the MPO since 1974.

The MPO approved The Transportation Plan for the year 2030. The two governing bodies have not approved the Transportation element in the Comprehensive Plan as yet, but the MPO has met this first responsibility.

The Transportation Improvement Program (TIP) is also an MPO document that identifies all significant transportation projects that are within the MPO boundary (Sedgwick County). As a minimum, it should include all transportation projects that have federal funding. This agenda item is whether to include 37th or Woodlawn in the TIP.

You recently approved the Unified Planning Work Program for the years 2000 and 2001. As staff of the MPO, we receive federal Planning funds to accomplish the tasks that are identified in this document. This proposed TIP (Attachment 1) contains \$880 million of transportation projects. 60% of it is Local, 15% is State, and 25% is Federal.

Previously, we have not brought the approval of the TIP to you, because we have used a sub-committee called TAC, and a Coordinating Committee to handle perfunctory issues. As the Wichita and Sedgwick County CIPs are both officially approved documents, and as you have already had your input while the two CIPs were being prepared, we recognize the priorities in these documents and simply include them in the TIP.

The proposed TIP, as mailed to you, does not include 37th Street or Woodlawn, and we will wait for your final action today before sending this document to KDOT.

The MPO's Planning Boundary is Sedgwick County, and this TIP document covers all projects in the entire county. After the 1990 Census, the Urban Area Boundary was officially identified so that urban and non-urban funds can be budgeted separately. The most recent Urban Area Boundary includes 6 incorporated cities and very small sections of unincorporated Sedgwick County. One might expect this red line to expand significantly after the Census 2000 data is made available. In fact expect the red line to cross over into parts of Butler County. However, for right now the MPO must determine how to spend the \$50 Million in this Urban Area over the next five years using STP, CMAQ and Bridge Funds.

These three funding categories are federal apportionments provided for our Urban Area.

This 5-year apportionment of \$50 Million is for the MPO to allocate to various projects that you consider your priorities. Federal regulations are clear, in that you cannot sub-allocate these federal funds on the basis of population share of these jurisdictions. It is our job as your staff to present to you the facts, and also allow opportunity for input from all other entities or citizens. Any project in the TIP and with federal funds involved, must be consistent with the MPO's Long Range Transportation Plan. The full TIP document must be Financially Constrained and each project must demonstrate the

source of funding. So the City of Wichita projects are derived from the City Council's approved CIP. Sedgwick County's projects in the TIP come out of the County CIP. If a small city in the Urban Area requests the use of federal funds, then the MPO must review the project and be assured that the local match will be available.

The controversy whether you need to include 37th or Woodlawn is what you'll hear from representatives of both cities. Neither 37th nor Woodlawn are in the official approved TIP. Thirty-seventh Street through the 1990s was a likely project discussed and endorsed by the Technical Advisory Committee (TAC) and the Coordinating Committee. 37th Street between Oliver and Woodlawn, has been shifted out to later years at least twice. We could not put this project on the official TIP because the issue of "who'll pay the Local Match" has not been resolved.

Earlier this year, the City of Bel Aire requested our Planning Department to shift the focus from 37th Street to Woodlawn. As staff to the MPO, we have concluded an independent analysis of both 37th and Woodlawn, and reported our findings. Part of the problem stems from the fact that Bel Aire owns one half of the right of way on 37th, Woodlawn, and even Oliver Street. On 37th Street, Bel Aire owns the north half and Sedgwick County owns the south half; and the City of Wichita abuts the south right-of-way line.

On Woodlawn, between 37th Street and the Railroad tracks, Bel Aire has west half and Sedgwick County has the east half, with Wichita abutting the east right-of-way line. North of the tracks, Woodlawn is entirely under the jurisdiction of Bel Aire. Bel Aire's claims that for the mile on Woodlawn between 37th and 45th, it's frontage is 89%. It is still willing to fund 100% of the local match.

In the mid 90s, 37th Street had more traffic on it than Woodlawn. Since then, a lot of changes have occurred. Bel Aire itself has grown considerably, but with the improved interchange at K-254 to the north, and with K-96 to the south, traffic on Woodlawn now exceeds the volume on 37th Street by 84% in year 2000. At the mid-mile on Woodlawn, traffic is 67% more than on 37th Street. Over the past three years, while Woodlawn traffic has grown by 46%, 37th traffic declined by 2.5%. The existing volume on Woodlawn exceeds the 10,000 vehicles-per-day threshold for widening 2-lane arterials to 4 lanes. Woodlawn is the only 2-lane street in the metropolitan area with volumes exceeding this 10,000 vehicles-per-day threshold, and is a regional transportation facility. The interchange at Woodlawn and K-254 will continue to draw more traffic down this street, instead of Rock or Webb Road, as these are at-grade intersections.

MAPC's 2030 Transportation Plan identifies both 37th and Woodlawn as needed improvements. The volumes on both these streets justify improvement. Even in the future, Woodlawn will continue to serve more traffic.

Two weeks ago, City PW offered a suggestion to stripe Woodlawn to 3-lanes and not widen it. Woodlawn does have shoulders in both sides. Our practice in the past has been to build 3-lanes instead of 4 if there are right of way constraints, or if any further widening will impact the residential character of the neighborhood. An example is Meridian (Central to Maple). I can't think of a project where we simply re-stripe the existing pavement.

On Woodlawn, we feel this is not a neighborhood street. It's a link that connects two regional highways, and 3 lanes is not a solution. We did look at accidents along both these streets, using information that is consolidated from the both Wichita Police and Bel Aire Police. The intersections of 37th and Woodlawn, and 37th and Oliver are fully already fully improved. Over the past five years, there were 2 accidents reported at each of these improved intersections. This graphic only illustrates the accident locations for the sections of roadway that are proposed for widening and improvement. Presently, the intersection of 45th and Woodlawn has stop signs, and does not have any turning lanes. The Woodlawn project will improve this intersection as well. Overall there were 24 accidents on Woodlawn including one fatality, and 37th Street had 8 accidents.

Woodlawn will cost \$3.3 million, so the local share pledged by Bel Aire is \$1.million. Thirty-seventh Street would cost \$2.3 million, so the required local share would be nearly \$700,000. Woodlawn's higher cost is due to a half mile of 5-lane instead of all 4 lanes over the full mile. It also includes a large drainage structure, and the intersection of 45th and Woodlawn is part of this improvement as well.

On Monday, May 22, TAC voted in favor of adding Woodlawn to the TIP. On Wednesday, May 24, Sedgwick County Commissioners voted 3-1 in support of the Woodlawn. They continue to emphasize, however, that 37th continues to be an important project that should be reviewed and ultimately programmed. But there higher priority at this time is on the Woodlawn Project.

The City of Wichita voted on May 9, unanimously, recommending you to consider 37th Street instead of Woodlawn. You had asked us the details of that motion, and we have provided the council minutes in your package.

In addition to the objective analysis, we also examined the effect of adding Woodlawn in the TIP, and what its effect is on other projects programmed in the Wichita CIP. WE find that Wichita street projects as programmed in the City CIP are not impacted by the Woodlawn project. In fact, there were federal funds available to move two projects ahead of where they are in the Wichita CIP. However, if both 37th and Woodlawn are included in this five year program, assuming there is full local match available for the 37th project, then some other project will need to be set back. I need to also emphasize that the TIP is a continuous program. We will amend it every year to maintain the future five year period. You can also amend the TIP mid-year at any time.

**GAROFALO** "At the last session, we took public comments but said we would leave it open to anything new that could be presented. So if there are any speakers in the audience who think they have some new information that they can provide, we would be glad to hear it.

**STEVE LACKEY**, Director of Public Works, City of Wichita "I think Jamsheed covered a lot of the technical issues, but he did raise some issues that I feel like need responding to. One, he said he was not aware of the City of Wichita changing any asphalt mat roadways from two lane to three lane. We have had a program in the Capital Improvement Program for several years, budgeted at \$300,000 where it is called asphalt mat rejuvenation. We have gone in to do some Tyler Road improvements, 55<sup>th</sup> Street South improvements, 37<sup>th</sup> Street North improvements, and have built selective left-turn lanes. That is part of the issue here, and it was one of the reasons that we had this budgeted in our own Capital Improvement Program to forego having to build four and five lane facilities that absolutely didn't warrant it at that point in time. It was a matter of trying to stretch our dollars.

I think that is an obvious solution here. You could place a left-hand turn lane the full length of this mile and reduce the rear-end accidents that could be occurring. We have a street in Wichita, Meridian, from Maple to Central. It carries 12,500 per day approximately, and we built it to three lane standards. We built 29<sup>th</sup> Street west of Arkansas to three lane standards. We built 29<sup>th</sup> East to Rock Road to three lanes. Granted those were curb and guttered streets, but we have also done some asphalt mat rejuvenation projects.

By doing this and improving 37<sup>th</sup> Street, you say a lot of taxpayers' money and you are able to take on projects that have a higher ranking when it comes to overall needs within the urban area. We could go to the City's Capital Improvement program and pick out projects similar to the Harry project and it would rate very favorably at or above what the Woodlawn project would rate. Quite frankly, the 37<sup>th</sup> Street corridor is not complete. It needs to be completed. It is a bottleneck and it is unsafe. I think you saw the slides last week of the ditches. It is simply a project that is not yet complete. It is a project that the Metropolitan Area Planning Department has tried to sponsor for a number of years and bring Bel Aire and Sedgwick County and the City of Wichita together to help fund this project. To my knowledge, obviously this project was never funded. Bel Aire never did want to do it and they still do not want to do it ahead of Woodlawn. It is an incomplete corridor. It is not good practice; it is not good planning, and I think the Metropolitan Area Planning Department recognized that for the last several years.

A year ago, Sedgwick County and the City of Wichita agreed that we would use federal dollars to help fund this improvement if all parties could get together and fund the match. If it is going to get down to the fact that you need local match for 37<sup>th</sup> Street, I think I heard yesterday at the County Commission meeting, that the City of Wichita was willing to participate one-third on this, even though we own no part of the roadway. But we spent City taxpayers' dollars at 37<sup>th</sup> and Woodlawn in rights-of-way that we don't totally own in order to provide a corridor and improvements that made planning and engineering sense. We felt like it was only the responsibility of Bel Aire, primarily, along with Sedgwick County, to help improve 37<sup>th</sup> Street, since we had used our own money, both in the intersection and north of the intersection on Woodlawn. We felt like that was reasonable. And to take a project like Woodlawn and infuse it into the program without the opportunity to rank it against all of the other projects in the City and the County C.I.P. is simply not fair.

As far as the vote that the TAC Committee took, yes it was 5-4, but I want to point out to you, because some of you chair the Coordinating Council and have chaired the Coordinating Council before, the process that we have used before is that the TAC Committee would meet, make recommendations to the Coordinating Council, and then they would make recommendations on to the Planning Commission. Several of you have chaired that. The County Commission is part of it, the City of Wichita is part of that group; the board member from the Transit. That Committee never voted on this. This process was completely different, and why, I don't know. It has never really been explained to me why the Coordinating Council was never allowed to vote on this process. I think it is flawed.

The bottom line is, I really feel like the answer to this to pave 37<sup>th</sup> Street, re-stripe Woodlawn, or let's hold them both out of the program, re-prioritize all of our projects and come back a year later with recommendations that everybody can agree to. If 37<sup>th</sup> Street was left in and done in 2003, or if Woodlawn is placed in in 2004, nothing is going to happen between those years right now. There will probably be no planning accomplished in this first year. Let's redo the process and see where all of the priorities shake out later. The City of Wichita is definitely not opposed to allowing the communities outside of Wichita to have their funds to build the improvements that make good engineering sense, and there is continuity in the program. We have done that in Haysville, we have done it in Park City, and we were more than willing to do it on 37<sup>th</sup> Street and allow Bel Aire to participate in that. We just feel like Woodlawn was thrown into the mix without adequate planning and programming and prioritization with other projects within the urban area. We feel like there are a lot of other projects that are more worthy. That is all I have. Thank you."

**MARNELL** "Mr. Lackey, if this plan that the department has put together for the Metropolitan Planning Organization, if it was passed today as it is, the Committee that this process appears to have passed by would still review all of the stuff again next year?"

**LACKEY** "It would all take place again next year. Every year you have to redo the plan."

**MARNELL** "Do you think there would be hope of reconciliation between the parties next year if there wasn't this year?"

**LACKEY** "I think it would give all of the parties more of an opportunity and less pressure to make a decision. Right now, it would give them more of an opportunity over the next year to work out what the priorities are, and I think more information

could be made available. I simply don't think there was adequate discussion on this, particularly on one of the boards that is supposed to make recommendations to you. There was none of that."

**BARFIELD** "Mr. Lackey, I look here and I see that we are talking about Harry from Webb Road to Greenwich Road and we are talking about a four lane arterial we are widening and reconstructing into a four lane arterial, and I see this in a similar vein as I see Woodlawn from 37<sup>th</sup> Street to 45<sup>th</sup> Street. What is the difference?"

**LACKEY** "We went through a prioritization process, not only in our own Capital Improvement Program, but we used that prioritization process to infuse projects into this TIP. It is not a project that came into the process in the last month. It has been in our C.I.P. for a number of years, and it has been rated against all of the other projects in the community, so I feel like there has been a process that has been followed. This one has not had a proper process in my mind."

**BARFIELD** "Okay, so you feel that simply by re-striping this street that that would be sufficient to justify the traffic patterns that you have identified for the future on Woodlawn?"

**LACKEY** "I think in the future you are going to have to improve it, but if you looked at that chart, up at 45<sup>th</sup> and Woodlawn there is 2,000 cars per day north of the intersection. There are certainly less than 10,000 south of the intersection. But this project re-paves the entire intersection, it channelizes it, and it is not needed. It simply is not needed from a vehicular traffic point of view. And I haven't even talked about the fact that at least they have room today to do what I am talking about. It would be a very cheap expenditure. The width of their asphalt mat today is between 39 and 40 feet wide. They could put in three 12-foot lanes or three 3-foot lanes and not have to rebuild the roadway and provide left turns for the whole mile. Similar to what we have done in some of our other improvements.

If we built 37<sup>th</sup> Street, for an example, and if there is a \$600,000 match and the three units of government split it, that is \$200,000 apiece. Otherwise, Bel Aire is looking at over \$1 million for the Woodlawn project and 37<sup>th</sup> Street still isn't addressed. In terms of taxpayers' savings to everybody, you could forego that expense for a longer period of time. I think the City of Wichita recognized the fact that the traffic count was going to be higher at 37<sup>th</sup> and Woodlawn, because we paved it and we added lanes on the north leg, contemplating higher average daily traffic (ADT).

So I just think there are ways of doing this without outlaying over \$3 million. Their original proposal was for over \$4 million that went up to 49<sup>th</sup> Street, and I think the Planning Department talked them into cutting it back because it wasn't justified. I don't think it is justified going through the intersection, as well. The traffic counts aren't there to rationalize it, either."

**BARFIELD** "But when we talk about traffic counts, you are also aware that the Planning Department has already recognized the traffic is decreasing on 37<sup>th</sup> Street as we talk."

**LACKEY** "True, but that is one attribute, when you go to program a road improvement. The other attributes that I look at as Public Works Director, and I think transportation planners fail to recognize, are the drainage needs, the maintenance costs, the potential safety liability on this roadway. The fact that we have a bottleneck there simply is not good planning. But the fact that the ditches are extremely steep on Woodlawn; the ditches are deep, yes, but they are broad. They have gentle 4-1 or 5-1 slopes. On 37<sup>th</sup> Street, they are 1-1 or less. They are straight up and down in some cases. There is a railroad crossing with signal hardware, a guardrail and then a drop off in the ditch. There are twice as many access points on 37<sup>th</sup> Street than there are on Woodlawn. There are about 14 on Woodlawn in this mile and there are 27 on 37<sup>th</sup> Street.

Traffic is one attribute, and I guess if you count votes, or heads, that is important. But there are other attributes when you make decisions to rebuild roadways; otherwise some streets would never get rebuilt that are simply falling apart."

**JOHNSON** "Mr. Lackey, did you look at the possibility of three lanes on 37<sup>th</sup> Street?"

**LACKEY** "No, we haven't. We were following the Transportation Comp Plan."

**JOHNSON** "I thought that since you looked at Woodlawn, I didn't know if there was a possibility that you had looked at a three lane plan. Maybe there would be a way of maybe doing both projects at the same time by doing something like that."

**LACKEY** "I would just say this. One of the reasons I don't think that would be a total solution is that under today's traffic counts, three lanes would certainly accommodate 37<sup>th</sup> Street. In the future, as you saw, Jamsheed pointed out that the traffic counts would over 12,000, so if we are going to go in and rebuild it to put in three lanes, there is not sufficient room to extend the asphalt mat that is there. If that was a potential, then yes, but because of the ditch and the constraint and the right-of-way, we would have to build curb and gutter, and we might as well go ahead and build the full width now."

**GAROFALO** "I would like to go back to this alleged agreement about Harry and I-135 to George Washington Boulevard. Explain that from your perspective. What is all of that about?"

**LACKEY** "This is going to be a long answer, so hang with me. We were asked that if Woodlawn was placed into the TIP and moved back to 2004, and 37<sup>th</sup> Street was eliminated, what project would you move forward if the MAPC voted in that manner? So we got together with Planning and told them which project we saw should move up. Now, the fact that all of these budgets and these programs get re-calculated and re-programmed every year, and the fact that Jamsheed said that the City of Wichita is not losing any projects if you put one project in, doesn't diminish the fact that you have moved a project into the program that costs almost \$3.5 million, and you have taken a project out that costs about \$2.5 million; so

there is \$1 million in there that could be used for another project. It is important, as we all go through our budgets in our C.I.P., we re-calculate this every year, and if there is an opportunity to move more deserving projects in, then that should be done.

The fact that we have moved one project up in the program and moved Woodlawn back, doesn't solve the issue. The issue is prioritization and total money available for all projects in the urban area. I am of the opinion that there are more deserving projects in the area than Woodlawn."

**GAROFALO** "Do you consider Harry between I-135 to George Washington Boulevard as more important than Woodlawn?"

**LACKEY** "Yes."

**GAROFALO** "Another question I have and I think some of the other Commissioners have is that Bel Aire says it won't kick in the local share on 37<sup>th</sup>. The County hasn't committed, and they own the other half. Where is the money going to come from to do 37<sup>th</sup> besides the federal money? Where is the local share going to come from?"

**LACKEY** "I really think, and this could always be debated and I am sure it will be, but we have kind of been playing a poker game for the last decade as it is. I think each agency is waiting for the other to flinch and go ahead and build it. The County owns the south half of 37<sup>th</sup> Street, has been maintaining 37<sup>th</sup> Street, and they have no responsibility to maintain the north half. So in my mind, Bel Aire has not been paying for the maintenance on the north half of 37<sup>th</sup> Street, they have not been willing to step forward and pay their half or their share on 37<sup>th</sup> in the past. And now we are going to go and pave another road further up and leave a bottleneck on a transportation corridor that the MAPC has already identified a need on for four to five lanes.

And 37<sup>th</sup> Street has been in this program for years. Bill Stockwell is sitting over there and he can tell you. I am not going to drag him into this fray, but he was the one that pounded the table to put this into the program and put all of the different cities together and the county. I think now is the time to face reality and get 37<sup>th</sup> Street programmed and figure out what the local match is going to be and get on with it."

**GAROFALO** "If we followed your recommendation as to putting this off, what impact would that have on federal funds for this time frame?"

**LACKEY** "I think what we would all have to do is move in projects that would fill up the budget, No. 1, but there are several different alternatives we could do. We could leave 37<sup>th</sup> Street in and show in the Transportation Plan that there is going to be a commitment for local match and not program Woodlawn.

We could pull them both out and put in other projects for this year and revisit this whole thing a year from now, after there has been time to discuss and compromise."

**GAROFALO** "Did I misunderstand that 37<sup>th</sup> Street, and I haven't gone through every bit of this, neither 37<sup>th</sup> nor Woodlawn are in this now? Is that what we are trying to do at this point?"

**LACKEY** "It is what you are trying to do now."

**GAROFALO** "So neither one is in. So 37<sup>th</sup> Street isn't in even though it has been talked about for a long time."

**LACKEY** "What is in now is Woodlawn and the Harry project. That is what they are asking you to vote on now."

**GAROFALO** "I understand that, but neither one is in now?"

**KROUT** "That's right, neither one is currently."

**MICHAELIS** "Mr. Lackey, would it be possible to do both in a sense? Couldn't we do 37<sup>th</sup> to the four lane standard and couldn't we re-stripe Woodlawn to the three lane standard as part of one project? Would that be possible?"

**LACKEY** "I doubt if the Feds would participate in the Woodlawn project. That would probably have to be done with some local money. But that is certainly my answer to this. You could do them both and still save a lot of money over what you would have spent before, both at the local level and the federal level. But you couldn't package them both together into one project and expect the Federal Government to pick up 80% of the Woodlawn project."

**MICHAELIS** "I guess I wasn't getting there, but I was looking at one at \$3.3 million and one at \$2.3 million; and say everybody does kick in their share, would there be enough to do both? Obviously it wouldn't take \$3.3 million to stripe Woodlawn."

**LACKEY** "That's right. No, I think if everybody kicked in their money, there could be enough to re-stripe. I do think you would probably have to lay what is called a slurry seal. It is kind of a paint job on the roadway to cover up the old stripes and then you could just put new thermoplastic down."

**BARFIELD** "Okay, you have mentioned that you have built some streets as you did 29<sup>th</sup> Street in the three lane process. Now, my question is, can you tell me one street where you went in and did what your are suggesting? You just re-stripe an existing street?"

**LACKEY** "We have added on to asphalt mats and re-striped them at intersections, we have gone in at intersections and added asphalt on the edges an then re-striped them to accommodate left turns, either into major entrances or street intersections."

**BARFIELD** "But we have not done it for a mile stretch like what we are proposing here."

**LACKEY** "Not a full mile, no."

**OSBORNE-HOWES** "How much do you expect this re-striping of Woodlawn to cost? Have you made any estimates on that?"

**LACKEY** "No, I haven't."

**OSBORNE-HOWES** "And did I understand you to say that the City of Wichita would contribute one-third of the cost on 37<sup>th</sup> Street?"

**LACKEY** "That was discussed yesterday in front of the County Commission. The City Council has not voted on that, but that would be a proposal that could be discussed in the interim."

**GAROFALO** "But the County hasn't made any commitment?"

**LACKEY** "No. I don't want to put words in David Spear's mouth, but he had thought that in the future, and he told me that he was planning outside their five-year program, that at some point in time they would participate in the 37<sup>th</sup> Street paving. But it is not within their current five-year program. But he suspected that at some point in time they would be a contributing player in that project."

**LOPEZ** "Mr. Lackey, to widen it then and re-stripe Woodlawn would not require any construction activity on those ditches?"

**LACKEY** "The current roadway is between 39 and 40 feet wide, so there would not have to be any work done to the asphalt. And the ditches would remain the same. You would just re-stripe."

**OSBORNE-HOWES** "You had mentioned that the 37<sup>th</sup> Street corridor was not done yet. Could you elaborate on that?"

**LACKEY** "It is not done between Oliver and Woodlawn. The fact that this two-lane asphalt mat is left with steep, deep ditches on either side, there is four lanes on either side. It is not complete and it is a corridor that needs completed."

**OSBORNE-HOWES** "Would that complete the corridor?"

**LACKEY** "It would through approximately from Webb all the way over to Hillside."

**GAROFALO** "Are there any other questions of Steve? I think Councilmember Pisciotte would like to address the Commission."

**JOE PISCOTTE** "Thank you Mr. Chair, members of the Commission. I have the privilege of representing the second district on the Wichita City Council, which encompasses some 55,000 to 60,000 who live on the east side and who have to drive these highways and byways that we are talking about. Before I chat, I want to commend all of you for the good work you do. I think if there is one job in the City that is perhaps more arduous and difficult than the City Council, it is being on the Metropolitan Planning Commission.

One of the issues that is before the City Council and is particularly important to the second district is Rock Road. In my opinion, there is nothing more important, nothing more difficult to address at this time on the infrastructure public agenda than Rock Road, perhaps with the exception of Kellogg. We are working on Kellogg and we have every expectation that we are going to resolve that in the very near future and we hope to complete it in the very near future.

We can't say the same for Rock Road. We are working very hard as to how we can be innovative and creative to solve some of the problems that have been created on Rock Road because of some lack of planning, not necessarily on your part, but making decisions for the moment and not necessarily making decisions for the long haul. I say that because the 37<sup>th</sup> Street corridor was part of the equation as we have been thinking about alleviation of the problems on Rock Road. How can we resolve some of the traffic safety and the expediency problems?

In my mind, the 37<sup>th</sup> Street corridor was done. We were going to be able to have a four-lane road from Hillside to Webb Road, with the exception of one small glitch that we are going to take care of, we are going to straighten that one little part. To have to come back now and anticipate that this corridor is going to remain as a two lane bottleneck really presents great difficulties for us as we are trying to plan on a much broader, much more comprehensive basis. I drive that area all of the time and as a matter of fact, I drove it again yesterday and I drove it this morning to make certain that I was

correct on this. All of the activity that is at Koch Industry, and yes the numbers are down right now because their employment is down, but they drive that corridor as well as the one going south, for the places that they live, shop and recreate in the eastern part of town. It is a dangerous corridor, as Mr. Lackey has stated, and I think we need to complete it.

I know it is very difficult for you to go against staff recommendations. I was surprised to find that there was such a strong feeling of going with the staff on this particular issue. I was perhaps caught somewhat shortsighted on it because I didn't know that this was going to develop. I thought that the 37<sup>th</sup> paving was in the plan and that we were going to go with that. I didn't know that this was being changed, it was being put in without re-prioritizing or going through the same process until I got a copy of a letter that County Commissioner Gwin had sent to Bel Aire responding to their request to support them in this particular activity.

Let me say also that you are caught up into a set of politics that you are not usually caught up in, part of which is the fact that Bel Aire was incorporated in 1980. It presents all of the nuances of two cities trying to operate together without really thinking through what is going to happen in the long term. This issue, I think, is really is at the heart of it. You are also being caught up in a set of politics of having to make some decisions on transportation that are somehow trying to be blended with the broader Comprehensive Plans that we worked so hard on in an orderly manner and that you so very well are involved in. I would suggest that you not consider only the figures that are presented to you by staff. Those are not figures that are required by Federal Law or by the Federal Mandates, or whatever you want to call them, to allow either of these projects to go forward. They are largely judgement calls that are being put together to justify a decision that has been made outside the normal planning process.

One of the issues that was raised yesterday in the County Commission is the local match. Why hasn't the City of Wichita stepped forward and wanted to provide the local match? Let's take a moment to talk about some public finance. Much of the money that is being used for these kinds of efforts comes from the 1-cent sales tax that was passed by the voters in 1985, and distributed throughout the County. It is distributed to the City of Wichita, to Sedgwick County, and to the other communities in the County, including Bel Aire.

The City of Wichita expends those entire amounts on projects throughout the area. Most of the money is going to Kellogg, which is used by everyone in the community. Not one cent of that sales tax money that has been distributed to the County or to Bel Aire or the other communities has gone to that. Bel Aire receives, this year, \$450,000 in that sales tax money. Last year it received \$401,000. It is increasing about 10 to 11 %. It becomes very easy for them to suddenly want to talk about this local match when they use those monies only in the city limits of Bel Aire and are not shared throughout the community. It also becomes very easy to say yes, we will put this over until 2004 and shove another project in and that is going to allow them to accrue the money that they need for the local match. We are prepared to participate on 37<sup>th</sup> Street, and we told the County Commission yesterday that we would put forward a proposal and I think we can deliver on it of 1/3, 1/3, 1/3, on the local match for 37<sup>th</sup> Street.

Had I known in advance that we were going to change the rules of the game; that we were suddenly going to have other projects up for grabs for the use of this money, I guarantee you that there are others throughout the city and particularly in the second district that would have been far more important. I would ask you to take your attention, for example, to the intersection of Rock Road and 29<sup>th</sup> Street and go east on 29<sup>th</sup> Street and turn off on Penstemon as you try to get back on Rock Road. I guarantee you that those figures will far exceed not only the traffic counts but the accident rate that goes on on any given day. I was not asked to participate in the reprioritization of these issues on what I consider to be one of the major critical issues of the community.

I would also ask you to consider what is going to happen to 37<sup>th</sup> Street if it is not built under this plan. I doubt if anybody is going to step up and say 'yes, we will build it'. So, as that particular area develops, as Koch comes back and builds, as development takes place along 45<sup>th</sup> Street, as there is a proposal right now to develop, what are we going to say to folks when we say that 37<sup>th</sup> Street is still an undeveloped, dangerous corridor. And believe me, it is dangerous. I would suggest that we go ahead with 37<sup>th</sup> Street. It was in the plan. That we re-stripe, as Mr. Lackey has suggested, and then we get together, as a community, and talk about Woodlawn from 37th to K254, all the way out. Let me suggest, for your consideration, if you vote now on Woodlawn, you will be making a vote for the moment, in response, I think, to some political activities that are going on, and you will have one more Rock Road on your hands. Because as soon as this thing is built, and five years down the road, you are going to be asking the question why didn't we build a six lane road with raised medians and appropriate accel, decel lanes? I want you to think about how short of a time ago it was when we made the bad decisions on Rock Road, largely in response to pressure of the moment. Let me ask that when you make this vote that you do it on a comprehensive basis; that you do it on a community-wide planning basis and you do it in the best interest of the entire community.

I think quite frequently we are asked to make some decisions that that are required to close the gap between expectations and reality. I would ask you to close those gaps within the reality of the best interest of the community on a long-range plan. Thank you very much."

**BARFIELD** "Councilmember, I hear you talk about development on 45<sup>th</sup> Street that is in the future. We see, currently housing development going up to the east and to the west of Woodlawn, from 37<sup>th</sup> Street to at least 45<sup>th</sup> Street."

**PISCOTTE** "That is true."

**BARFIELD** "Now at this particular time, I have heard no one, yourself included, talk about any development taking place on 37<sup>th</sup> Street that would justify us putting that street over Woodlawn."

**PISCOTTE** "Sir, I would be glad to address that. Just for openers, Bel Aire has, I think, worked out an arrangement with Jostens that is going to build a building and move that company from Hillside. I think that you don't necessarily need to talk about future development, even though there are some tracts there that can be developed. I think you need to take a look at what is there at the present time. You have two churches on the south side that are full on any given Sunday morning. You've got a great deal of activity going along on 37<sup>th</sup> Street, so it is not a question of future development on that one, it is a matter of building that road so it can help offset some of the development that is going to be going along in other particular areas.

Incidentally, Commissioner Barfield, I watch that traffic there almost daily, and many of the figures that are cited on that particular instance from Woodlawn north, it is not through traffic as is 37<sup>th</sup>. It is going from the 7-11 Store and the Sonic Store across the street from the car wash, or across the street to the bank, or the veterinarian. It is a lot of local cross traffic.

Also, and it has been said, but let me say it again, if you were to drive either of these streets, Woodlawn is in good shape. It has wide shoulders, it has frontage roads. Thirty-seventh Street has none of that. As Mr. Lackey has already defined it, it is a dangerous street that needs rebuilding at the earliest opportunity."

**MARNELL** "Councilmember Pisciotte, I like you, drove that road about 6:00 o'clock this morning and went back and forth each direction and looked at the four lane roads that interconnect with it to see what it looked like. I think there is no question in my mind that 37<sup>th</sup> Street reminds me of the old K-96 Highway that went east out of Wichita with no shoulders and very dangerous looking ditches. Woodlawn is a nice wide street with shoulders. I like for people to use innovative solutions, being a taxpayer, and so the center stripe idea that has been discussed by Public Works sounds intriguing. I think we probably don't know everything we would need to know about that now.

But when you get past all of that and the traffic counts support one more than the other, we still come down to the funding issue, and we have an obligation to get this out today, and with committed funds and somebody on the line for this. I would be hard pressed thinking that if you were over on this side of the table how you would put that project that is unfunded, and maybe that doesn't justify putting the other one in, putting the unfunded project there and coming up with, at best, a commitment for a third of the required funding. Would you address that?"

**PISCOTTE** "I think I have indicated that on the part of the City of Wichita, I think we could fairly safely say that we will commit to the \$200,000 from our part. I think the County will do likewise. I can't speak for them, obviously, but I have had some conversations, and I think that they are sufficiently aware of the need to build 37<sup>th</sup> Street, and I think they also know that if we let this opportunity fall through, it may not get built. I don't see Bel Aire stepping up to the table saying 'give us Woodlawn and then we will build 37<sup>th</sup> Street'. If Bel Aire would chose not to participate on 37<sup>th</sup> Street, then I think it would behoove the City and the County to come together as good community partners and take care of it."

**GAROFALO** "Councilmember, if we did what Steve suggested about not doing anything and letting this ride for a year or 6 months, or whatever, do you think it is possible that the City of Wichita and Bel Aire and the County could get together and figure out a plan to some accommodation on both of these?"

**PISCOTTE** "Mr. Chair, I can only, obviously, speak for myself and hopefully for my colleagues on the City Council. I think that there are a couple of things that you should keep in mind that would address that in a broad sense. We work very hard with the County on Compact 2000. We meet weekly and we have very broad-based community issues on the table that we are going to address. This is one small part of that that we would be willing to sit down and talk about. As a matter of fact, I have already met with my colleagues from the County Commission, talking about how we can resolve these problems.

I think we also have a new organization called REAP, which is some 27 communities in a seven county area and we are talking all of the time about common issues. We focus on our common values and not on our differences. That is a long answer to say yes, that I think we can. I was asked why I feel so strongly about this road when it is not even in the City of Wichita, but it is such a crucial integral part of what we are trying to do to the overall transportation plan for the east side that I think it would be a mistake to go contrary to what has been planned.

If the only alternative is to put it off, I guess I would have to say we should consider it. I would prefer, obviously, that you make the tough decision to keep the TIP as it was. Go with 37<sup>th</sup>, then let us come back together and talk about how we can not only do Woodlawn, but how we can do the other funds in the urban area. One of the things that Commissioner Gwin raised yesterday, which I thought was inappropriate, and no indictment at all, was whether or not this was a fault line between the City of Wichita and the rest of the County. And it is not.

I think everybody knows that I have been trying to do everything that we can to come together as a community and work on common problems and focus on shared values. I think we can do that with these funds, but I think there is a feeling that we have somehow circumvented the process that one entity was allowed to come in in the 11<sup>th</sup> hour and do something, get staff to put together some data without any input as to how it might the overall planning of other entities."

**GAROFALO** "Are there any other questions?"



**BARFIELD** "I don't have a question, but I would like to hear from Bel Aire."

**GAROFALO** "Yes, we will. Thank you."

**MIKE KILLIAN** "I am with Mid-Kansas Engineering Consultants, 411 North Webb Road in Wichita. I work with another engineer in the office and was asked to help prepare a cost estimate for this project. When I first heard the idea of striping Woodlawn from two lanes to three, for a short period of time, that sounded like a good idea. I believe the shoulders are there from probably fairly recently widening or improvement to that street. If you were to stripe it to three lanes, you would have to do more to prevent from it from violating the AASHTO Green Book of Roadside Design Guide.

A number of times Steve and Joe have mentioned how dangerous 37<sup>th</sup> Street is. By adding a third lane in, you change the geometry of Woodlawn and immediately put two of the lanes right over close to the slope.

The AASHTO Roadside Design Guide uses design speed, vehicle counts and shoulders and fore-slopes to determine a safe roadway. I believe Woodlawn, in most areas may not have slopes flatter than 3 to 1. I am thinking they are probably about 1 to 1 or 2 to 1 in some areas, which would be a dangerous, non-traversable slope, according to AASHTO. I just felt obligated to point that out because it sounds like a simple solution, but I don't see that it would work. One thing that does work is adding curb and gutter. When you have curb and gutter, AASHTO uses that as a form of barrier and they reduce the clear zone to half a meter for about two feet. To add curb and gutter to Woodlawn would create drainage problems, I believe, and I don't think that would be money well spent at this time. I think if you are going to do Woodlawn, you need to go all of the way, take care of the drainage problems, add curb and gutter, and have enough lanes and not create a dangerous situation as has been set along 37<sup>th</sup> Street."

**OSBORNE-HOWES** "Are you retained by Bel Aire, or are you just speaking independently?"

**KILLIAN** "We are Mid-Kansas Engineering; we provide assistance to the Bel Aire City Engineer. Most of my work is with KDOT. I have not worked with Bel Aire before."

**GAROFALO** "Are there any other questions of this speaker?"

**MICHAELIS** "Did I understand you to say that in your mind that Woodlawn is not as safe as 37<sup>th</sup> Street?"

**KILLIAN** "No, what I am saying is that if you were to stripe it as for three lanes, in other words eliminate the shoulder, then it would be no safer and maybe not as safe as 37<sup>th</sup> Street."

**MICHAELIS** "Okay, so you are in disagreement with Mr. Lackey that the 39 feet is adequate for three lanes."

**KILLIAN** "Yes. I haven't looked at it, but I am sure that you would violate the AASHTO Green Book and Roadside Design Guide because you change the geometry. You are eliminating the 6 foot shoulder that currently exists and that is used as a buffer based on the number of vehicles at 40 mile per hour design speed."

**OSBORNE-HOWES** "I just want to get this straight. Have you gone out and made measurements or are you just giving your opinion?"

**KILLIAN** "I am giving an opinion, and I believe others are as well as far as slopes. Is that what you are referring to?"

**OSBORNE-HOWES** "I just wondered if you had gone out as an engineer and checked that out, or what."

**KILLIAN** "We hadn't gotten that far yet. The estimate is preliminary and it is my opinion that the slopes are about the same on both 37<sup>th</sup> Street and Woodlawn, and Woodlawn has deeper ditches. Are there any other questions?"

**GAROFALO** "Okay, thank you. Anyone from Bel Aire want to speak now?"

**LEE PARKER** "I live 420 North Armour. I am the Bel Aire City Attorney. I had no plan to speak today as I came, but there is one thing that I need to clear up, I believe. There has been a statement made concerning both Woodlawn and 37<sup>th</sup> Street that Bel Aire has not participated in the past in the reconstruction or maintenance of those streets. That is absolutely true. Bel Aire was a city of the third class until the Fourth of July of 1998. At that time, it reached a population of 5,000. Why that is important is that under state law, both Woodlawn and 37<sup>th</sup> Street were considered connecting link roadways. And with cities with a population of less than 5,000, which are cities of the third class, those connecting link roadways within those cities are maintained by the county, or by the township. The reason why that is important and done in that way is because until you become a city of the second class and hit 5,000 in population, the state and federal funds for connecting link roadways go to those other entities and not to those cities themselves. That is why it happens that way.

So I wanted to clarify, when we are talking about Bel Air stepping to the plate and doing maintenance or construction on those roadways, that was outside their purview up until July 4<sup>th</sup>, 1998. It is almost two years that it has come within purview. That is all I wish to say, but if there are questions of me from that legal standpoint, I would be happy to answer."

**LOPEZ** "It has been two years that Bel Aire has participated?"

**PARKER** "To my knowledge, there has been no maintenance done on the roadways. You might have to ask Tim Johnson, who is the City Administrator. I know that beside the roadway in the 4100 block, there was drainage improvements done under the roadway and beside the roadway on Woodlawn. There is about a 10-foot deep lake that sets right off north of the railroad track. We call it a lake. When I was a kid, we called it a pond. But at any rate, it is about 10 or 12 foot deep and it is a retaining pond that sets out there over about half of an acre right off of the roadway. It slopes right down to it, right north of the railroad track. That was a Bel Aire improvement. But as to the laneage of the roadways, I am not sure that there has been any improvements done on either of those roadways in the last two years. Thank you."

**TIM JOHNSON** "I am the City Administrator of Bel Aire and I live at 4465 North Westlake Court in Bel Aire. I lack Dr. Pisciotte's eloquence, although I strive to achieve it at some point in the future."

I have very few points to make, but I would be willing to respond to any questions. First, on the questions regarding maintenance on the north side of 37<sup>th</sup>. Very little, if any asphaltic maintenance has been done by the City of Bel Aire though both the County and the City of Bel Aire take care of ice control, actually, on both sides. It is an overlapping function. We do maintain drainage on the north side, and in fact, we do plan to improve some of that drainage at Harding and 37<sup>th</sup>.

I have heard it mentioned that the process that brought us to this meeting today and brought us to the question of whether it will be 37<sup>th</sup> Street or Woodlawn that is to be included in the 2000 TIP is a flawed one. I agree with that. Bel Aire has no presence or direct representation on any board, committee, or commission that has any authority or jurisdiction over the programming of road projects in the TIP None whatsoever. Every year, we receive from KDOT a letter indicating what the project schedule is for 37<sup>th</sup> Street and inviting us to contact our representative, the Metropolitan Area Planning Department, and through them, the Planning Commission, if we have any changes that we would like to have incorporated either in that particular project or to the overall plan itself.

Comment has been made regarding roads that don't warrant being four-lane being reconfigured as three lane. Certainly that is correct. I don't disagree with that; however, as you have all seen, Woodlawn does warrant being made a four-lane street. Of the three entities involved, the County, Bel-Air, and the City of Wichita, only Bel-Air is guaranteeing the money on the table today. Yes, it is \$1 million versus perhaps \$200,000 to \$250,000 for 37<sup>th</sup> Street, and that should be some indication of how important we feel Woodlawn is versus 37<sup>th</sup> Street. If we are willing to spend 3 to 5 times as much of our own money on 37<sup>th</sup> Street, a corridor that benefits not just Bel Aire, but Wichita, the second district and cities outside of both Bel Aire and Wichita; in this county and outside of this county.

Woodlawn and 37<sup>th</sup> Street are the only projects being considered for the TIP this year that I am aware of that are outside the corporate limits of the City of Wichita. Allusion has been made to the political nature of this. I concur. It is political. I believe that is all I have to say. I would be happy to respond to any questions."

**GAROFALO** "Are there any questions of the Administrator?"

**BARFIELD** "Sir, did I hear you correctly in saying that should we approve the Woodlawn project, you are ready to commit funds to 37<sup>th</sup> Street at a later date?"

**JOHNSON** "As soon as we can come up with the funds, and if Wichita is willing to participate in the local match on 37<sup>th</sup> Street, that logically would mean that Bel Aire will be able to participate sooner than we would if it is strictly a Bel Aire/Sedgwick County local match."

**OSBORNE-HOWES** "But are you saying that you require Woodlawn first, and that you will provide somewhere between \$700,000 and \$1 million first and only after that you would do 37<sup>th</sup> Street?"

**JOHNSON** "Yes, Commissioner."

**GAROFALO** "Let me ask you the same thing I asked the Councilmember. If we were to defer this or not take any action on it at this point, would that be a big horrible thing to you? Do you think you can get together and work something out?"

**JOHNSON** "Mr. Chairman, it is my belief that if this is deferred that you won't see it again for years. I don't think either one will happen."

**GAROFALO** "Okay. That answers my question, I guess."

**MCKAY** "Can you give us any information why?"

**JOHNSON** "Why? Because we are having such great difficulty during this process doing either one of these projects outside of the City of Wichita. There are, I believe, somewhere in the neighborhood of 50 projects this year in the TIP. All but one, 37<sup>th</sup> Street, is inside the corporate boundaries of Wichita. Thirty-Seventh Street is outside, although they border on it and stand to gain a greater benefit, at least immediately from that particular street. We look at the warrants, we look at the traffic, we look at the accidents, we look at the increase in traffic and the projected increase. We believe it is time to make a switch, and we believe that now is the right time. We also believe that 37<sup>th</sup> Street should be done just as soon as possible. If I could guarantee Bel Aire's match today for 37<sup>th</sup> Street, I would be happy to do so. I just can't do that. It is simply a matter of finance."

**MICHAELIS** "Could you explain to me, from the viewpoint of Bel Aire, because I drive those streets almost daily, too, and 37<sup>th</sup> Street has Treetop Nursery on the north side of it, which generates a tremendous amount of traffic, and for the Mid-Kansas personnel, I suggest you go out there to look at those ditches because there is a considerable difference.

Why, when we have a street that affects Bel Aire, and both of these affect Bel Aire considerably, what is the overwhelming desire, I guess, to take a fairly good street that is fairly adequate, in very good shape, and completely redo it versus taking a street that is pretty inferior and leaving it alone, when they both seemingly have a benefit to Bel Aire. What is your decision based on?"

**JOHNSON** "The need is greater on Woodlawn, and in terms of need, we believe it will continue to increase."

**MICHAELIS** "What is that need?"

**JOHNSON** "That is traffic volume, that is accidents, it is the fact that the northwest corner of 37<sup>th</sup> and Woodlawn continues to develop in Bel Aire. Also, as you have seen, we have razed that blighted building at 45<sup>th</sup> and Woodlawn and are beginning the process of developing that intersection.

The Catholic Care Center is about to add 120 plus assisted living units at the northeast section of that corner. We believe that development that is already in the development process along Woodlawn combined with the increased residential development at 37<sup>th</sup> and Woodlawn just south there at LaCross, just east of three at the Remington, and other areas, particularly once Wichita develops that south side of 37<sup>th</sup> and Woodlawn, which we all expect to be commercial, that is going to pull in even more through traffic from Kechi, from Park City, from Whitewater, from Benton and the rural areas north of town. Jamsheed referred to the divided or split grade intersection at Woodlawn. It is the easiest and safest access/egress to Wichita from north of town.

Thirty-seventh, for the most part, isn't going anywhere, either east or west. It ends at Webb and it dead-ends behind the Word of Life Church at I-235, just west of Meridian. We simply see the need being greater now and in the future to go ahead and move on Woodlawn."

**GAROFALO** "Okay. Are there any other questions of the Administrator? Thank you. Is there anyone else who feels they can add something new? Jim, do you want to add anything from the County's perspective?"

**JIM WEBER** "I am the Deputy Director of Public Works for Sedgwick County. Mostly, I just want you to know that we are here. We didn't bring a lot of people today. I just want to bring maybe a little focus in from the County's point of view.

Once again, traffic counts on Woodlawn greatly exceed those on 37<sup>th</sup> Street right now. Accident rate on Woodlawn is 24, versus 8 on 37<sup>th</sup> Street. The local match is available. There is somebody wanting to put the money up. I haven't heard this brought up today, but in the discussions yesterday, the Board of County Commissioners did discuss that if, in fact, 37<sup>th</sup> is an important project to do, and by the way, we think it is, I think their conversation leaned toward that they were certainly even willing to discuss a three-way project with all local funding, \$800,000 apiece, if that is what it takes to get it done; if that needs to be programmed into the C.I.P. That is really all I have. You can ask me a question if you wish, I am not real familiar with this process, but I did sit through yesterday's County Commission meeting, and I think I have a feel for what happened there."

**GAROFALO** "Are there any questions of Jim? I guess not. Commissioner Marnell has a question of Jamsheed."

**MARNELL** "I understand our requirement to get this plan pushed out of here so that we will, in fact, get the funds for the near-term projects in particular. So we have an active plan. I also think I heard you say that the plans in the out years maybe 2004 and 2005 really don't start any money going into those or the engineering work for some time yet. Is that correct?"

**MEHTA** "If it is in 2004, for example, you would be starting engineering by the end of this year or the early part of next year. If it was for 2003, you should have started engineering right now, if you are starting from scratch. If you already have some engineering work built in, then you can expedite the process. So if it is even 2004, either the Bel Aire and KDOT in that case, would have to start working together before the end of this year to start the process. They have many environmental reviews and other coordination aspects that have to be met."

**MARNELL** "I have a follow-up on that. This project is set in under the STP Plan, and it shows it as \$2.3 million. When you look to 2005, there is a project at 21<sup>st</sup> Street North and on 47<sup>th</sup> Street South. Those two added together come up to about \$2.2 million. It appears that 2004 was already overspent, on the estimate basis, by \$1 million. If you just swap those two for that one and gave the parties time to see if they can get these things prioritized on a broad basis and on the criteria of needs, is that something that would be a solution that would work, or does that create a second problem of some kind?"

**MEHTA** "Which projects would you take from 2005?"

**MARNELL** "I would take the 21<sup>st</sup> North from Oliver to Woodlawn and the 47<sup>th</sup> Street South, I-135 to Hydraulic. It's almost the same money. Flip those two. That way, it keeps this whole issue of where it can be resolved without something

getting down the road and either money spent and get reversed and wasted or continuing controversy with a group that we need to have cooperation among."

**MEHTA** "If you were to do that, then in this assumption, are we dropping Woodlawn out of this five year program?"

**MARNELL** "No, we would move it to 2005, and move those to 2004."

**MEHTA** "It would be for Bel Aire and Wichita to agree on those, and the five year program, as it is right now, your end of \$650,000 in the negative will stay constant."

**MARNELL** "Yes."

**MEHTA** "It is possible, but we haven't heard from the sponsoring agencies if that can be acceptable to them in their phasing. I guess Wichita as well as Bel Aire."

**MARNELL** "I guess I would have to say that they don't have a vote in this. So, what I am asking you is is that something that is going to create some other kind of havoc because at some point, they are going to have to prioritize this stuff?"

**MEHTA** "Right. But I would still urge you to have that coordination because it is possible that some of these projects are phased for some reason. It may be relying on some other project. Perhaps that is not true in this case, but Public Works from the City of Wichita would be able to best answer that."

**MARNELL** "Well, I think everybody here would like to see this meeting end before it gets dark outside, and we need to somehow move this along. We seem to have intractable positions, but if we can move it so that it remains somewhat status quo, it would seem like then we could, by the time we deal with this next year, it is then time to get on down the road and see where we go."

**WARREN** "Ron, let me hear that proposal again."

**MARNELL** "If you look at the plan, if we put something in 2004 that is the magnitude of this project, it is probably going to have to start work early, and we still have these unresolved issues of funding and priorities. So it would seem that if we skipped a year we still have time next year to move it back. It may have to be a cross-line project if it ends up being the succeeding project."

**WARREN** "But I think you are saying put both projects, both Woodlawn and 37<sup>th</sup> Street North, in and take something out, is that what I am hearing?"

**MARNELL** "No, what I said is take the plan that is laying here before us, take two projects from 2005 that are smaller projects and that would probably take smaller lead time and move them up; move this one back and then we would see if this thing can't be resolved."

**MCKAY** "Ron, are you saying to move back both Woodlawn and 37<sup>th</sup> Street?"

**MARNELL** "Thirty-seventh isn't in this plan."

**MCKAY** "I understand that. Woodlawn is."

**BARFIELD** "As I sit here, I hear one of the leading opponents to this plan, and he has specifically told us that he would prefer that we would not defer this decision. We have heard one of the proponents of this say that he prefers that we not defer the decision. I think it is incumbent upon us to make the decision as we best see it and move on with it and let's get this issue passed."

**OSBORNE-HOWES** "I just have a question for Jamsheed. When you made the projections on 37<sup>th</sup> Street and Woodlawn for the future, were you taking into account, were you keeping 37<sup>th</sup> Street the way it is now, or were you making a projection as if it were a four lane?"

**MEHTA** "Thirty-seventh Street as a minimum four-lane, and Woodlawn as a minimum four-lane and assuming that along 37<sup>th</sup> what we call traffic zones, you may be familiar with from months earlier, we have plugged in additional land use from what there is today to see what the net results were. Say if my numbers suggest in the range of 12,000 on 37<sup>th</sup>, it is not just an extrapolation of today's through traffic in the year 2030, it is through traffic and new traffic, based on new growth in the 37<sup>th</sup> corridor."

**GAROFALO** "Are there any other questions? Okay, I think we have heard from everybody now that we need to hear from. So the Woodlawn project is listed in the proposal now and we have to take action on that."

**PLATT** "In what year?"

**GAROFALO** "It says in 2004. On that last table is where that is listed."

**PLATT** "I wanted to be sure that we had that in the record."

**GAROFALO** "Our action is to decide here whether we want to approve the Transportation Improvement Program for the year 2000 through 2005."

**MOTION:** That the Metropolitan Area Planning Commission approve the Transportation Program for the year 2000 through 2005.

**BARFIELD** moved, **WARNER** seconded the motion.

**GAROFALO** "Is there any discussion? Commissioner McKay?"

**MCKAY** "We are sitting here, appointed by these elected officials that can't get along. I have been on this Commission now for almost nine years and this has happened about twice every year, and it hasn't been the same Commissions. I think it is about time that the elected people quit using us as a, I don't know what you want to call it, a ball I guess, to throw around.

We just went through six months of getting our butts chewed out with the worst bunch of people in the world and never saw one City Councilmember or County Commissioner step up and publicly defend us, yet now they can't agree on something and there is an outside group here now and they are wanting us to decide. So, I can't support the motion.

I think it is time for them to sit down and work the damn thing out. Pardon my language. "

**MARNELL** "When we saw the presentation last week or two weeks ago, based on traffic counts, I would have been prepared to support the Woodlawn from 37<sup>th</sup> to 45<sup>th</sup> Street. I went up there and drove that this morning, and I don't have an engineering degree, and my eyes are corrected, but I can still see ditches, and there is no comparison between those two ditches. I would think it would be in Bel Aire's best interest for their citizens to fix what looks like a very hazardous road that still reminds me of K-96 that I used to drive a lot with no shoulders at all. When you left the pavement, you were in the ditch, as compared to Woodlawn, where it has sloping. Those ditches aren't nice either because there are a lot of culverts along there that if someone going even at probably the posted speed would hit one of those stone reinforced culverts, they are probably going to die. It is a bad situation and they are neither one great projects. I can't support the Woodlawn project after having gone out there, and I would have supported it just based on volume numbers, but I don't think they are comparable pieces."

**BARFIELD** "One thing, 37<sup>th</sup> is an east/west traffic way and we cannot overlook the fact that an awful lot of the traffic that in previous years would have utilized that street is now utilizing the by-pass, and so therefore I don't see where, and we are talking about a street that is in a residential area and are talking about a speed limit there of 35 miles per hour. I don't see any development; nobody has been able to talk to us about any development that is taking place on 37<sup>th</sup> Street. Clearly we can see development on both sides of Woodlawn from 37<sup>th</sup> Street to 45<sup>th</sup> Street and it is only going to get worse. We have more people moving into that area. I feel that that alone and the fact that Mr. Pisciotte, who represents District #2 and who was opposed to this, but has asked us not to delay this, makes me think that it is incumbent upon us, we are charged with making the decision, and I don't think we should do what the City Council wants, or what Mr. McKay is accusing the City Council or the County Commission is doing is passing the buck. We are charged with making this decision and I think it is incumbent upon us to do that."

**OSBORNE-HOWES** "I was just thinking. A couple of weeks ago, I thought that Woodlawn made sense, too, when I drove it. Thirty-seventh Street, certainly eyeball-wise, makes more sense. I guess I am at the point where I am feeling that we are being held somewhat hostage by a city that says 'we are going to match this and we are going to pledge like \$1.1 million to this'. But if I figured this right, this still requires the public to spend over \$2 million, and I guess I don't feel that I can support the motion. I am somewhat inclined to say let's put this back and let them solve this. I would like to hear more comments."

**MICHAELIS** "I am not going to take up a lot of time because we have been here a long time, but I echo the sentiments of the last two people that spoke."

**PLATT** "I would like to ask the people who say they can't support the motion if they are suggesting that we approve it with different projects or if they are suggesting that we simply ignore the whole thing and forget about it."

**MCKAY** "We can't do that."

**PLATT** "What are you suggesting then?"

**MCKAY** "Ron gave a good suggestion a while ago. Pull the Woodlawn project out and let them work it out among themselves and move something else forward. I am not here to say any particular project."

**WARNER** "Then who would make that decision? Would that ultimately come back to us?"

**MCKAY** "Not if they moved a project up that is in the plan. They would just move it from 2002 to 2004, or whatever. Isn't that right, Marvin?"

**KROUT** "Ultimately, the decision has to be made by the MPO as to where the priorities are. If things got worked out to the extent that everyone was satisfied, then it might go to this executive group. But whenever there is any issue of any kind of debate like this, we felt that the whole Planning Commission, which is the official body, needed to be involved in this decision. I think your options are 1)the motion on the table 2)the motion that was suggested by Commissioner Marnell, and then 3)the other possibility that was discussed was to basically leave a hole in the Transportation Improvement Program, not officially endorse any project for 2004. But if you think that something can be worked out after this meeting, then you could reserve a place for another project, whether it be 37<sup>th</sup> Street, or Woodlawn. You can't put 37<sup>th</sup> Street into the TIP at this point because there is no local match of any kind."

**BARFIELD** "It is my understanding that today is the day to decide on this?"

**KROUT** "Yes. We do need a decision. Jamsheed said that we were on borrowed time. KDOT and the federal government needs this decision by the end of this month."

**WARREN** "Based on this formula that we have here, who decides, or maybe you know now, where would 37<sup>th</sup> Street fit into this? Would it be in 2006, 2007, or where do you see that? It is not in here at all, right? Assuming it gets support and funding, where do you see that going?"

**KROUT** "It requires local funding, to be in the TIP, and we would have to find those assurances of support, and then, maybe a year from now or 6 months from now, the MPO can revisit the entire TIP and make a decision on priorities."

**WARREN** "Do I understand that it was in there once but got passed over for lack of funding?"

**KROUT** "It has never been in the Transportation Improvement Program. We have had a separate set of accounting that we have done for these three federal projects: STP, CMAQ and BRIDGE, and that is where we were trying to hold a place for 37<sup>th</sup> Street until we find the funding. But we can't put it into the official TIP without that assurance."

**GAROFALO** "So in a year from now, when we take this up again, the 37<sup>th</sup> Street project could be put in if there is some kind of an agreement between the parties where there will be a local share?"

**KROUT** "Right."

**GAROFALO** "But it will at least be a year, then, right?"

**KROUT** "No, you could come back and amend the TIP at any time, so if there was some kind of an agreement that was reached six months from now or four months from now, you could."

**MCKAY** "Or two weeks."

**GAROFALO** "Yeah, or two weeks from now. Okay, if they can come up with some kind of agreement, we can always consider putting the 37<sup>th</sup> Street project in there when there is a commitment for a local share. Is there any other discussion?"

**WARNER** "Did I misunderstand something? You are saying that the 37<sup>th</sup> Street project is not anywhere in this TIP?"

**GAROFALO** "No."

**WARNER** "And it wasn't."

**GAROFALO** "No. There is no local share committed."

**WARNER** "Well, then, 37<sup>th</sup> Street is the newcomer?"

**KROUT** "No. You talked about 37<sup>th</sup> Street in a collection of tentative programs for those three federal programs, but neither Woodlawn or 37<sup>th</sup> Street has ever been in the Transportation Improvement Program."

**WARNER** "Okay."

**GAROFALO** "Okay, is there any other discussion? If not, let's have a roll call vote, I guess."

**VOTE ON THE MOTION:** The motion failed with 7 votes in opposition (Lopez, Osborne-Howes, Michaelis, Warren, Marnell, McKay and Carraher) and 5 in favor (Platt, Johnson, Barfield, Warner and Garofalo). Hentzen was not present.

**GAROFALO** "Okay. Commissioner Marnell wants to try another motion."

**SUBSTITUTE MOTION:** That the Metropolitan Area Planning Commission approve the Transportation Improvement Program for year 2000 to 2005, subject

to moving two projects, one identified at \$1.3 million and one at \$900,000 under the column headed STP into 2004 and take the Woodlawn project and move it into 2005.

**BARFIELD** "Which two are you favoring?"

**MARNELL** "On the next to last page of the report. It is 21<sup>st</sup> North from Oliver to Woodlawn and 47<sup>th</sup> Street South from I-35 to Hydraulic. I don't think this resolves that issue, but it does get it out of here and to the state for allocation, and gets our deadline met, and gives the parties involved time to resolve their issues. It is probably not the correct prioritization, but we will probably revisit this at least next year."

**MARNELL** moved, **WARREN** seconded the motion.

**GAROFALO** "Okay, so we are moving Woodlawn to 2005 and those other two projects up. Is there any discussion?"

**PLATT** "I can see the merit and thought behind the motion, and I haven't made up my mind how I am going to vote on it yet, but I want to put it in the record, but I can see that there is an attempt to achieving some compromise here, which is desirable."

**GAROFALO** "Is there any other discussion?"

**VOTE ON THE SUBSTITUTE MOTION:** The motion carried with 9 votes in favor (Johnson, Warren, Barfield, Carraher, Garofalo, Marnell, Michaelis, Lopez, and Osborne-Howes), and 3 in opposition (Platt, Warner and McKay). Hentzen was not present.

**GAROFALO** "Okay, we need a motion to certify that the planning process is being carried out in conformance with federal requirements."

**MOTION:** That the Planning Commission certify that the planning process is being carried out in conformance with all requirements of the 23CF Part 450-334.

**CARRAHER** moved, **WARNER** seconded the motion, and it carried unanimously (13-0).

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**FRANK GAROFALO**, Chair, read the following zoning procedural statement which is applicable to all City of Wichita zoning cases:

Before we begin the agenda, I would like to take this opportunity to welcome members of the public to this meeting of the Metropolitan Area Planning Commission. Copies of the agenda for today's meeting, the public hearing procedure, and copies of staff reports on zoning items are available at the table nearest to the audience.

The Commission's bylaws limit the applicant on a zoning or subdivision application and his or her representative(s) to a total of ten minutes of speaking time at the start of the hearing on that item, plus up to two minutes at the conclusion of that hearing. All other persons wishing to speak on agenda items are limited to five minutes per person. However, if they feel that it is needed and justified, the Commission may extend these times by a majority vote.

All speakers are requested to state your name and address for the record when beginning to speak. When you are done speaking, please write your name and address, and the case number, on the sheet provided at the table nearest to the audience. This will enable staff to notify you if there are any additional proceedings concerning that item. Please note that all written and visual materials you present to the Commission will be retained by the Secretary as part of the official record. If you are not speaking, but you wish to be notified about future proceedings on a particular case, please sign in on that same sheet.

The Planning Commission is interested in hearing the views of all persons who wish to express themselves on our agenda items. However, we ask all speakers to please be as concise as possible, and to please avoid long repetitions of facts or opinions which have already been stated.

For your information, the Wichita City Council has adopted a policy for all City zoning items, which is also available at the table with the other materials. They rely on the written record of the Planning Commission hearings and do not conduct their own additional public hearings on these items.

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**KROUT** "If anyone is sitting here waiting to testify on case for duplex zoning on Walnut Street, near the intersection of 31<sup>st</sup> and Seneca, that case has been deferred. It doesn't show up on the agenda because it has been postponed. I just want to make sure that there isn't anyone sitting here who is expecting to testify in that case."

**3. Consideration of Subdivision Committee recommendations from the May 18 meeting.**

**GAROFALO** "On these subdivision items, we are pulling Item 3/3 for discussion, and we can have a motion unless there are questions or comments on any of the others. Is there anyone in the audience who would like to speak on any of the Subdivision Committee items?"

Subdivision Committee items 3/1, 3/2, 3/4, 3/5 and 3/6 were approved subject to the Subdivision Committee recommendations. **PLATT** moved, **CARRAHER** seconded the motion, and it carried unanimously (12-0).

**3/1. SUB2000-24 - Final Plat of CHURCH OF THE MAGDALEN ADDITION, located on the northwest corner of 127<sup>th</sup> Street East and 21<sup>st</sup> Street North.**

- A. As this site is adjacent to Wichita's city limits, the Applicant shall submit a request for annexation. Upon annexation, the property will be zoned SF-6, Single-Family Residential.
- B. City Engineering needs to comment on the need for guarantees or easements. The Applicant shall provide a guarantee for the extension of sanitary sewer and City water services.
- C. If improvements are guaranteed by petition, a notarized certificate listing the petitions shall be submitted to the Planning department for recording.
- D. City/County Engineering needs to comment on the status of the applicant's drainage plan. County Engineering has required a copy of the final drainage plan to verify how off-site drainage is to be handled. City Engineering has approved the drainage plan and has required a cross-lot drainage easement. The minimum building elevation appears to be too low.
- E. County/Traffic Engineering needs to comment on the access controls. The plat proposes two access openings along 21<sup>st</sup> St. North and two access openings along 127<sup>th</sup> St. East. County Engineering requests that the entry access be coordinated with the streets and entrances on the south side of 21<sup>st</sup> Street. On the final plat, the dedication of access controls shall be referenced in the plat's text.
- F. County/Traffic Engineering needs to comment on the need for any improvements to perimeter streets. The Applicant shall provide a guarantee for the construction of a left turn bay on 21<sup>st</sup> Street and the construction of a paved road to County standards on 127<sup>th</sup> St. East along the plat's frontage.
- G. County Surveying requests a benchmark elevation.
- H. Access to 127<sup>th</sup> St. East will require a release to cross the pipeline.
- I. The applicant shall submit a covenant regarding the ownership and maintenance of the proposed reserves.
- J. In the plat's text, the word "Reserve" shall be corrected.
- K. The 35' building setback lines along the tapers on the road rights-of-way need to be parallel with the new property lines.
- L. The 35' building setback along 127<sup>th</sup> St. needs increased to include the pipeline setback with a definite dimension with respect to the plat.
- M. For those reserves being platted for drainage purposes, the required covenant which provides for ownership and maintenance of the reserves shall grant, to the City, the authority to maintain the drainage reserves in the event the owner(s) fail to do so. The covenant shall provide for the cost of such maintenance to be charged back to the owner(s) by the governing body.
- N. The applicant shall submit a copy of the instrument which establishes the pipeline easements on the property, which verifies that the easements shown are sufficient and that utilities may be located adjacent to and within the easements.
- O. The plat's text shall include language that a drainage plan has been developed for the plat and that all drainage easements, rights-of-way, or reserves shall remain at established grades or as modified with the approval of the applicable City or County Engineer, and unobstructed to allow for the conveyance of stormwater.
- P. The applicant shall install or guarantee the installation of all utilities and facilities which are applicable and described in Article 8 of the MAPC Subdivision Regulations. (Water service and fire hydrants required by Article 8 for fire protection shall be as per the direction and approval of the Chief of the Fire Department.)
- Q. The applicant's engineer is advised that the Register of Deeds is requiring the name(s) of the notary public, who acknowledges the signatures on this plat, to be printed beneath the notary's signature.



- R. To receive mail delivery without delay, and to avoid unnecessary expense, the applicant is advised of the necessity to meet with the U.S. Postal Service Growth Management Coordinator (Phone 316-729-0102) prior to development of the plat so that the type of delivery, and the tentative mailbox locations can be determined.
- S. The applicant is advised that various State and Federal requirements (specifically but not limited to the Army Corps of Engineers, Kanopolis Project Office, Rt. 1, Box 317, Valley Center, KS 67147) for the control of soil and wind erosion and the protection of wetlands may impact how this site can be developed. It is the applicant's responsibility to contact all appropriate agencies to determine any such requirements.
- T. The owner of the subdivision should be aware of the fact that the development of any subdivision greater than five (5) acres in size may require an NPDES Storm Water Discharge Permit from the Kansas Department of Health and Environment in Topeka. Further, on all construction sites, the City of Wichita requires that best management practices be used to reduce pollutant loadings in storm water runoffs.
- U. Perimeter closure computations shall be submitted with the final plat tracing.
- V. Recording of the plat within thirty (30) days after approval by the City Council and/or County Commission.
- W. The representatives from the utility companies should be prepared to comment on the need for any additional utility easements to be platted on this property.
- X. The applicant is reminded that a disk shall be submitted with the final plat tracing to the Planning Department detailing this plat in digital format in AutoCAD. This will be used by the City and County GIS Department.

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**3/2. SUB2000-29 - One-step Final Plat of TARA FALLS 2<sup>ND</sup> ADDITION, located south of Harry Street, West of 127<sup>th</sup> Street East.**

- A. This site is located in the County's Four-Mile Creek sewer system and will be served by the County. Existing petitions for sewer, water, paving and sidewalk improvements have been submitted with the Tara Falls Addition. County Engineering needs to comment on the need for any new guarantees or easements. A sanitary sewer layout is requested. New City and County petitions are required.
- B. On the final plat tracing, appropriate wording shall be added to the Mayor's signature block indicating the City's agreement to allow a County sewer district to be formed within the City.
- C. If improvements are guaranteed by petition, a notarized certificate listing the petitions shall be submitted to the Planning department for recording.
- D. City Engineering needs to comment on the status of the applicant's drainage plan. The drainage plan is approved.
- E. The Applicant is reminded that a platting binder is required with the final plat. Approval of this plat will be subject to submittal of this binder and any relevant conditions found by such a review.
- F. The plat's text shall include language that a drainage plan has been developed for the plat and that all drainage easements, rights-of-way, or reserves shall remain at established grades or as modified with the approval of the applicable City or County Engineer, and unobstructed to allow for the conveyance of stormwater.
- G. The applicant shall install or guarantee the installation of all utilities and facilities which are applicable and described in Article 8 of the MAPC Subdivision Regulations. (Water service and fire hydrants required by Article 8 for fire protection shall be as per the direction and approval of the Chief of the Fire Department.)
- H. The applicant's engineer is advised that the Register of Deeds is requiring the name(s) of the notary public, who acknowledges the signatures on this plat, to be printed beneath the notary's signature.
- I. To receive mail delivery without delay, and to avoid unnecessary expense, the applicant is advised of the necessity to meet with the U.S. Postal Service Growth Management Coordinator (Phone 316-729-0102) prior to development of the plat so that the type of delivery, and the tentative mailbox locations can be determined.
- J. The applicant is advised that various State and Federal requirements (specifically but not limited to the Army Corps of Engineers, Kanopolis Project Office, Rt. 1, Box 317, Valley Center, KS 67147) for the control of soil and wind erosion and the protection of wetlands may impact how this site can be developed. It is the applicant's responsibility to contact all appropriate agencies to determine any such requirements.
- K. The owner of the subdivision should be aware of the fact that the development of any subdivision greater than five (5) acres in size may require an NPDES Storm Water Discharge Permit from the Kansas Department of Health and Environment in Topeka. Further, on all construction sites, the City of Wichita requires that best

management practices be used to reduce pollutant loadings in storm water runoffs.

- L. Perimeter closure computations shall be submitted with the final plat tracing.
- M. Recording of the plat within thirty (30) days after approval by the City Council and/or County Commission.
- N. The representatives from the utility companies should be prepared to comment on the need for any additional utility easements to be platted on this property.
- O. The applicant is reminded that a disk shall be submitted with the final plat tracing to the Planning Department detailing this plat in digital format in AutoCAD. This will be used by the City and County GIS Department.

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- 3/4. DED2000-10** - Contingent street right-of-way dedication from Phil Ruffin for property generally located south of U.S. 54, on the west side of Broadway (921 S. Broadway), described as:

The east 20 feet of the following described properties: Lots 93-99 (odd) Broadway Avenue, Lee's Addition, Wichita, Sedgwick County, KS; Lots 87-91 (odd), Lees 2nd Addition, Wichita, Sedgwick County, KS;  
and,

An unplatted tract of land described as follows:

Beginning at the northeast corner of Lot 93, Broadway Avenue; thence west 140 feet to the northwest corner of said Lot 93; thence north 24.3 feet, more or less, to the southwest corner of Lot 91, Broadway Avenue; thence east 140 feet to the southeast corner of said Lot 91; thence south 25.55 feet, more or less, to the point of beginning.

This Contingent Dedication is a requirement of a Conditional Use (CON 2000-02) and is being dedicated for future street widening on Broadway.

Planning Staff recommends the granting of this dedication be accepted.

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- 3/5. DED2000-11** - Dedication of a Utility Easement from Mennonite Housing, for property generally located south of Central, west of West Street, described as:

The east five (5) feet of the west ten (10) feet of the east 1/2 of Lot 2, Block 9, Parkwilde Addition to Wichita, Kansas; together with the south five (5) feet of the east 1/2 of Lot 2, Block 9, Parkwilde Addition to Wichita, Kansas, except the east 95 feet thereof. Generally located south of Central, west of West Street.

This Dedication is a requirement of Lot Split No. SUB 2000-16, and is being dedicated for construction and maintenance of public utilities.

Planning Staff recommends that the Dedication be accepted.

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- 3/6. DED2000-13** - Dedication of a street right-of-way from Via Christi Regional Medical Center, Inc., for property generally located south on the northeast corner of Murdock and Topeka, described as:

A tract of land in Lot 1, Block 1, Via Christi Regional Medical Center, Inc., Addition, described as follows:

Beginning at the southwest corner of Lot 1; thence east along the south line of Lot 1, 20 feet; thence northwest to a point on the west line of Lot 1, 20 feet north of the southwest corner of Lot 1; thence south along the west line 20 feet to the point of beginning. Generally located on the northeast corner of Murdock and Topeka.

This Dedication is a requirement of City Engineering for the Via Christi Regional Medical Center, Inc., Addition, and is being dedicated for additional street right-of-way.

Planning Staff recommends that the Dedication be accepted.

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Item taken out of order:

- 3/3. SUB2000-31** - One-Step Final Plat of GORGES ACRES, located on the north side of 13<sup>th</sup> Street North, west of 279<sup>th</sup> Street West.

- A. Since neither municipal water nor sanitary sewer is available to serve this property, the applicant shall contact the Environmental Health Division of the Health Department to find out what tests may be necessary and what standards are to be met for approval of on-site sewerage facilities and water wells. A memorandum shall be obtained specifying approval. Standard soil testing is required.
- B. If improvements are guaranteed by petition, a notarized certificate listing the petitions shall be submitted to the Planning department for recording.
- C. County Engineering needs to comment on the status of the applicant's drainage plan. A Floodway Reserve is required within the northern third of the plat to handle off-site drainage.
- D. The Applicant shall dedicate a 35-ft half-street contingent right-of-way along the east or west line of the plat to improve access to future development to the north.
- E. County Engineering needs to comment on the need for access controls. The final plat shall reference the access controls in the plat's text. County Engineering requires access control except for one opening. MAPD recommends that the opening coincide with the location of the contingent right-of-way dedication.
- F. If platted, the building setback needs to be 35 ft to conform with the Zoning Regulations for section line roads.
- G. The Applicant is reminded that a platting binder is required with the final plat. Approval of this plat will be subject to submittal of this binder and any relevant conditions found by such a review.
- H. Monuments shall be found or set per the Armour Survey.
- I. The plat's text shall include language that a drainage plan has been developed for the plat and that all drainage easements, rights-of-way, or reserves shall remain at established grades or as modified with the approval of the applicable City or County Engineer, and unobstructed to allow for the conveyance of stormwater.
- J. The applicant shall install or guarantee the installation of all utilities and facilities which are applicable and described in Article 8 of the MAPC Subdivision Regulations. (Water service and fire hydrants required by Article 8 for fire protection shall be as per the direction and approval of the Chief of the Fire Department.)
- K. The applicant's engineer is advised that the Register of Deeds is requiring the name(s) of the notary public, who acknowledges the signatures on this plat, to be printed beneath the notary's signature.
- L. To receive mail delivery without delay, and to avoid unnecessary expense, the applicant is advised of the necessity to meet with the U.S. Postal Service Growth Management Coordinator (Phone 316-729-0102) prior to development of the plat so that the type of delivery, and the tentative mailbox locations can be determined.
- M. The applicant is advised that various State and Federal requirements (specifically but not limited to the Army Corps of Engineers, Kanopolis Project Office, Rt. 1, Box 317, Valley Center, KS 67147) for the control of soil and wind erosion and the protection of wetlands may impact how this site can be developed. It is the applicant's responsibility to contact all appropriate agencies to determine any such requirements.
- N. The owner of the subdivision should be aware of the fact that the development of any subdivision greater than five (5) acres in size may require an NPDES Storm Water Discharge Permit from the Kansas Department of Health and Environment in Topeka. Further, on all construction sites, the City of Wichita requires that best management practices be used to reduce pollutant loadings in storm water runoffs.
- O. Perimeter closure computations shall be submitted with the final plat tracing.
- P. Recording of the plat within thirty (30) days after approval by the City Council and/or County Commission.
- Q. The representatives from the utility companies should be prepared to comment on the need for any additional utility easements to be platted on this property.
- R. The applicant is reminded that a disk shall be submitted with the final plat tracing to the Planning Department detailing this plat in digital format in AutoCAD. This will be used by the City and County GIS Department.

**NEIL STRAHL**, Planning staff, "This is a one-lot plat, located in the County on the north side of 13<sup>th</sup> Street North, west of 279<sup>th</sup> Street West. At last week's Subdivision meeting, this plat was approved, subject to staff comments. What the platting conditions were was a half-street contingent right-of-way dedication along the east or west line of the plat. In addition, one access opening was approved to coincide with the location of that contingent right-of-way dedication. So, for instance, if the contingent right-of-way dedication is platted by the applicant along the east line of the plat, then the access opening also would have to be along that east line.

The Subdivision regulations do provide for the dedication of contingent right-of-ways upon determination of the Planning Commission, to provide for potential street connections to adjoining undeveloped property to prevent the land-locking of adjoining properties and to avoid an excessive number of individual driveways along Section Line Roads.

In this case, the Subdivision Committee required the contingent right-of-way dedication in order to approve access to potential development to the north as you can see by the tax parcel map. This is the subject property right here (indicating) and a contingent right-of-way dedication along the west or east line of the plat would allow for improvement of access to property to the north. And this would promote an orderly pattern of development through an internal street system. At last week's meeting, the applicant, who also owns property to the north and to the west objected to this contingent right-of-way dedication and the applicant is here today to appeal this condition of the plat."

**GAROFALO** "Are there any questions of Neil? Okay, we will hear from the applicant or agent."

**MARK SAVOY** "I am with Savoy, Ruggles and Bohm, here representing the applicant. I have given you one exhibit; it is part of a FEMA map that kind of shows the drainage area there a little better. That is the reason for showing you that. The other, larger map that I gave you was a County map just to show that the general location of this is fairly remote to very much development activity.

When I expressed the property owner's desires, I may have done them in reverse order because I think one kind of got ignored. The comments as to access control, we are willing to give access control except for one opening, but we prefer that to be across our south property line anywhere and not be pinned to a specific location. Should you approve a contingent dedication, that pins it down to wherever we put that contingent dedication, so I ask that the one item be amended to, if you want access control except one opening, to allow us to have that anywhere across the south line.

In regards to the contingent street dedication, the reason I gave you that second form, I sought advice from the County Engineer's office in regards to the contingent dedication, more particularly the location that expressed the fact that the property owner is just dead against it. He just doesn't want to do it. He had a bad experience with a similar situation and he does not want any contingent dedication. Since we have the option of putting it on either side, I thought maybe if I got some information on that, I might be able to maybe sway him a little bit, but when I asked the County Engineer where they would prefer a contingent dedication or if they had a preference, they said if they had a preference for a road, we would want it over against the half-section line, closer to the line that is between the two quarter sections. In the west quarter section there is a creek that is referred to as 'Polecat Creek' that has quite a flood history. His reasoning was that he thought it ought to be down the half section line because the good ground that is on the east side of that creek is really not developable by the people who own it on the other side of the creek. So he said if he had his druthers of picking where a street would go, he would just as soon it would be along that line.

The piece of property I am working with is a 6-acre tract or a gross site of 6 acres, and is not adjacent to that line. I have a contract purchaser who is doing the platting. The gentleman he is buying it from has fee title to the 40 acres at the moment. The one I am doing the work for is buying the 6 acres, so I don't really have much control over that half-section line except to kind of feed a little bit to the reasoning that maybe a road along his east or west line either one of the 6-acre tract may not be real beneficial. It is a fairly deep tract, 35-foot width which encompasses .6 of an acre. If you are paying \$5,000 per acre, that is about \$3,000 for a contingent street right-of-way.

When I was trying to convince him that it probably wouldn't hurt anything to go ahead and give this and it was looking to the future and everything, and he asked if he could plant trees on it. I said 'sure', and he asked if the trees would always stay there. I told him that may not happen. He asked when it would be and I told him it could be 20 years, 30 years. I don't know when somebody else might do something else with that. Just like you don't know. Or it could be next month, so it didn't make him real happy to know that he was going to have a strip of land that he couldn't even plant trees on and rely on the fact that they would stay there.

So, No. 1, I am asking that you let us have access control except one opening across the south line of the property. Don't pin us down to one location. That kind of has to do with that there are other design features that need to take into consideration where he places his house, so on and so forth, and it could make a long drive if we are not careful.

Secondly, I ask that you do not require that we give a contingent street dedication along either property line. Thanks for your consideration."

**WARREN** "Mark, I am looking at GP 38-1 on this little map."

**SAVOY** "Is that the one that the chunk comes out of?"

**WARREN** "Yeah. Okay, do I understand that you are working for the fellow that is a contract buyer for this 6 acres?"

**SAVOY** "Yes. He is buying the 6 acres from the owner of GP 38-1, which is a 40-acre parcel."

**WARREN** "Is this a completed transaction, or is it subject to something?"

**SAVOY** "It is subject to platting."

**WARREN** "So you are dealing also a little bit with the owner of the bounds of GP 38-1?"

**SAVOY** "I don't think he has strong opinions except that he doesn't plan on, in his words, he doesn't plan on doing anything with the rest of the property. If he sells it at all, something is probably going to happen to it someday. He is not trying to divide off 5-acre tracts or anything like that."

**WARREN** "Are you of the opinion that he would not be willing, then, to give a dedication down the center of that?"

**SAVOY** "He doesn't want to affect anything. He has a number of parcels of land around that he farms and he is not interested in trying to help us out by giving a contingent dedication along his west line."

**WARREN** "It looks like something is going to get that, Mark. Either the guy wants to sell this land bad enough to dedicate something, or..."

**SAVOY** "Well, the guy buying is only buying 6 acres. He is the one that we are dealing with. He is buying 6 acres and he is the one that we are committing to giving away an additional .6 of an acre of land should we give that contingent dedication, via in the future before it becomes a valid dedication."

**WARREN** "But his seller could help him out a lot, couldn't he?"

**SAVOY** "If he chose to, I suppose he could."

**GAROFALO** "Are there any other questions? Thanks, Mark. Is there anyone else to speak in support of this plat? Is there anyone to speak in opposition. Seeing none, we will bring this back to the Commission. There was one vote opposed to this at the Subdivision Committee meeting."

**MICHAELIS** "That was me."

**GAROFALO** "Okay. Do you want to give us some input?"

**MICHAELIS** "Yeah. I just felt it was kind of inappropriate to go out here in the middle of la la land and say we need a street dedication when we have no idea if it is going to be there. Now if we are talking 13<sup>th</sup> and Woodlawn and something like that and access control, yes I can understand that, but we are out in the country here and there may never be anything else done there, and for that reason I don't see that we should deprive this person of an opportunity to use this piece of property for what he wants."

I think what Mark said made a good point. If we want to use as a guideline the section lines or half section lines or something, and it abuts that, then maybe we need to look at it, but to just go out here and take this 6 acres and say 'we want a street here', and then if we do another 3 acres 'we want a street here' and if we do another 4 acres 'we want a street here', I don't think that is necessary. That is why I voted against it before and I would vote against it again."

**WARREN** "Mr. Chair, I am on the Subdivision Committee, but I wasn't at that meeting, I was gone that day. Mark, let me ask you a question. Is this seller...do I understand that that seller has that quarter section that would be the southeast quarter?"

**SAVOY** "He owns the west half of the west half of the southeast quarter. He only owns a 40-acre strip, 660 feet in width by half a mile in depth, east of and adjacent to the half section line."

**WARREN** "He has 80 acres then?"

**SAVOY** "He has 40 acres."

**WARREN** "I am looking at 8 here, and this being a quarter section..."

**MCKAY** "He said the southwest quarter, didn't you?"

**SAVOY** "Southeast. He has the west half of the west half of the southeast quarter."

**WARREN** "Well, I guess what I am thinking is that the guy who is subdividing this and is becoming a developer. He may think of himself as a farmer, but by golly he is becoming a developer. I think he has an obligation, if he is going to start selling off land, to start providing for those things that are ultimately going to be necessary. He is shuffling that responsibility over to this buyer, but I think the buyer needs to beware. If you are going to sell me 6 acres, you had better start providing for what is going to happen to the rest of it."

**MICHAELIS** "I think that comes back to reality. When is this going to be an urban area? Ever? Probably not."

**WARREN** "That is what my argument has been along, that this needs to be put together in packages so that we do have some **unable to hear** along with it."

**MICHAELIS** "But when you start thinking that, to me that has to be within what we are looking at as far as the 30 year plan. We can't be looking at here 100 years away and try to say that there is going to be a street there. I just don't think that is fair."

**KROUT** "I think the point that staff is trying to make is that this may never become an urban area, or it may, but even if it is not, the whole reason that the County Commission and the Planning Commission, I thought, a couple of years ago, decided that they wanted to look at 5-acre lot developments in the country is because they have developed, in a haphazard way, without good standards and we have all kinds of problems of property that is locked out of too many access points along mile-line roads, and this is a fundamental thing."

If people find that coming in one lot at a time, and their response is 'well, it is a half an acre and we don't want to even make a contingent', and that is the way they can get their lots, then we are going to have one-lot plats, one after another, a hodge-podge with no contingent dedications and we are going to be left with odd pockets and odd areas that are going to be difficult to access and develop.

Even if it doesn't develop for urban purposes some day, this owner and other owners around him are going to develop it for suburban purposes. I think it is really missing the point and I think that if we are going to continue to allow this kind of flexibility, allow anyone on a mile section road to come in with 300 foot of frontage and 600 foot of depth and to provide no way of jointly controlling access and getting interior circulation and just allow the access anywhere that they want it on that mile-line road, I am not sure why we are even bothering to go through the platting process. I think maybe you ought to make a recommendation to the County Commission that we go back to a 5-acre exemption."

**GAROFALO** "Are there any other questions?"

**MCKAY** "We weren't privileged to have the FEMA map, and believe it or not, I was one of them who voted, and you know how I hate contingent dedications, but I voted for it primarily because two questions were asked of the applicant, 'why do you feel like you shouldn't have to put in a contingent dedication?' and the answer was 'well, if somebody else develops it, they can pay for the street'. The second one was 'we are never going to develop any of the rest of this ground'."

I do agree with him that he ought to have the privilege of being able to move that one driveway back and forth and not have to stay on the side, but now that I see this FEMA map, I am even more convinced because a third of this contingent dedication is in the floodway where they can't use it anyhow."

**MOTION:** That the planning Commission recommend to the governing body that the request be approved, subject to staff comments with the exception of giving the applicant the right to have the one opening of his choice.

**MCKAY** moved.

**GAROFALO** "That is with the contingent dedication?"

**MCKAY** "Yeah, with the contingent dedication, and the option was either side by the staff. It should be either on the west side or the east side."

**KROUT** "I am not sure that I understand your motion. Is your motion to require half-street dedication but not to require that the access be where that dedication is going to occur?"

**MCKAY** "I was under the impression that he gives a contingent dedication, either on the west side or the east side. It has nothing to do with the one exception opening. I am saying that he has a driveway opening at any place along the 300 feet. If it is next to it, that is fine. If it is not next to it, if it is on the other side of the 5 acres, then okay. That gives him a driveway, if not, then if he puts it there, he is bound to use the street and his driveway."

**KROUT** "That is one of the reasons that we are trying to encourage a pattern of internal streets is so that properties will take their access off of that street in the future. Now, what you are basically doing is approving two access points on this 300 feet for the future."

**MCKAY** "Potentially. If it never develops, I'm not."

**WARREN** "Could you go along with the fact that if the seller of this property be willing to dedicate his half down that quarter section line that that would be adequate?"

**MCKAY** "That is different. That is not even the same piece of property."

**WARREN** "Except that I think that they are related right now."

**MCKAY** "I don't disagree with that. I am simply looking at their 6-acre tract of ground here that..."

**MICHAELIS** "That has nothing to do with the plat that we are looking at."

**GAROFALO** "Okay, wait a minute. Let's do this a little more orderly."

**MARNELL** "I have a question of the motion maker. When you said either on the east or west side, you are talking about the specific 6 acres as opposed to the other section line that had been mentioned earlier?"

**MCKAY** "Right. All I am talking about is that 6 acres of ground that is up for the platting. When this was presented to us, it was said that they are to provide a contingent dedication and that could be either on the east side of the property or the west side of the property."

**MARNELL** "Could I ask, for further clarification, this party is still going to be granted access control anywhere along the property, would that go away if that dedication turns into a street so it would have to join the access control?"

**MCKAY** "I hadn't gotten that far. The whole contingent thing is about that this is clear out in the boonies and it is never going to happen."

**MARNELL** "It won't happen?"

**GAROFALO** "Of course, we don't know that."

**MCKAY** "It is very simple. If they have a driveway on the east side and the contingent dedication is on the west side, and somebody comes in and buys the other 6 acres to the west, he has to put in a contingent dedication and we can deny him any access off of 13<sup>th</sup> Street, and he has to come off of the dedicated street."

**KROUT** "But he will point to this case and what you did on this case and say why not me?"

**MCKAY** "Marvin, I am not going to argue with you. I made a motion. If nobody seconds it, then it will just go on down."

**GAROFALO** "Okay, do we have a second to the motion?"

**WARREN** "I'll second the motion just to get it on the floor."

**WARREN** seconded the motion.

**WARREN** "Somebody suggested that we couldn't deal with the other piece of land, but I think that because there is a sale being made here, if this buyer went back to the seller and said 'look, they are asking me for a dedication, but if you will give the dedication on the quarter section line, then I am not required this'. It is an option."

**GAROFALO** "I don't think we can require that."

**MICHAELIS** "It has nothing to do with this case."

**WARREN** "If he came back to us two weeks from now and said 'my seller is ready to dedicate down that quarter section line, do I have to, I think we could probably forgive it'. If we would defer it, we could."

**GAROFALO** "Is there any other discussion of the motion?"

**VOTE ON THE MOTION:** The motion failed. There were 4 in favor (McKay, Johnson, Warren and Lopez), and 8 opposed (Barfield, Carraher, Warner, Garofalo, Marnell, Michaelis, Platt and Osborne-Howes. Wheeler and Hentzen were not present.

**MOTION:** That the Planning Commission recommend to the governing body that the request be approved, subject to staff comments with the deletion of the contingent street dedication.

**MICHAELIS** moved, but the motion failed for lack of a second.

**SUBSTITUTE MOTION:** That the Planning Commission recommend to the governing body that the request be approved, subject to staff comments.

**LOPEZ** moved, **OSBORNE-HOWES** seconded the motion.

**GAROFALO** "Is there any discussion?"

**WARREN** "What you are saying now is that he is limited to where he can approach this property by wherever he decides to give that easement?"

**LOPEZ** "That's right. According to staff comments."

**VOTE ON THE MOTION:** The motion carried with 10 votes in favor and 2 votes in opposition (Warren and Michaelis).

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**MCKAY** "I would like to have item 4/2 pulled. I have a conflict of interest on it. I platted both pieces of property on either side of this easement."

**GAROFALO** "Let's see. These are vacations, so this is a public hearing."

**LISA VAN DE WATER**, Planning staff "Items 4/1 and 4/6 were presented at the Subdivision Committee meeting a week ago, and were all approved. I have no further comments to make on them. Aside from Item 4/2, and unless there is public comment, you can take these all in one motion."

**GAROFALO** "Is there anyone here who would like to speak on Vacation Items 4/1, 4/3, 4/4, 4/5 and 4/6? Okay, then we can have a motion for them."

**MOTION:** That the Planning Commission recommend to the governing body that vacation Items 4/1, 4/3, 4/4, 4/5 and 4/6 be approved.

**MCKAY** moved, **JOHNSON** seconded the motion, and it carried unanimously (12-0).

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**4/1. VAC2000-08** - Request by Woodridge Christian Church c/o Diana Dawkins and P.E.C., P.A. to vacate a 20-foot utility easement and joint access easement, described as.

Joint Access Easement:

The east 25 feet of the North 245 feet of Lot 138, Block 4, White Tail Addition, Sedgwick County, Kansas

20-Foot Utility Easement:

The east 20 feet of the North 430 feet of Lot 138, Block 4, White Tail Addition, Sedgwick County, Kansas, generally located approx. ½ mile west of 127<sup>th</sup> Street East on the south side of 13<sup>th</sup> Street North.

Development of a church on adjoining 2½ lots

The applicant is requesting to vacate the 20-foot utility easement and 25-foot joint access easements that run interior to the three lots that they intend to develop as a new church site.

Based upon the information available prior to the public hearing, staff recommends the MAPC make the following findings and recommendation to the City Council:

- A. That after being duly and fully informed as to fully understand the true nature of this petition and the propriety of granting the same, the MAPC makes the following findings:
1. That due and legal notice has been given by publication as required by law, by publication in the Daily Reporter of notice of this vacation proceeding one time May 2, 2000, which was at least 20 days prior to this public hearing.
  2. That no private rights will be injured or endangered by the vacation of the above-described utility easement and joint access easement, and the public will suffer no loss or inconvenience thereby.
  3. In justice to the petitioner(s), the prayer of the petition ought to be granted.
- B. Therefore, the vacation of the access and utility easements described in the petition should be approved, subject to the following conditions:
1. The applicant shall coordinate with the Office of Central Inspection to shift the western boundaries of Lots 139 and 140 to coincide with the eastern extent of the subject property on Lot 138.
  2. The applicant shall submit a restrictive covenant that ties Lots 139 and 140 together.

The Subdivision Committee recommends approval subject to the following conditions:

1. The applicant shall coordinate with the Office of Central Inspection to shift the western boundaries of Lots 139 and 140 to coincide with the eastern extent of the subject property on Lot 138.
  2. The applicant shall submit a restrictive covenant that ties Lots 139 and 140 together.
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- 4/3. VAC2000-00010** - Request by CAP Carpet, Inc., c/o Greg Perkins request to vacate a 20-foot utility easement, described as:

20-Foot Utility Easement described as:

The south 10 feet of Lots 4 and 5 together with the north 10 feet of Lot 3, all within Block 1, Carriage House Plaza Addition, Wichita, Sedgwick County, Kansas, EXCEPT the west 10 feet of said utility easement. Generally located north of Kellogg Drive and west of West of Woodchuck.

The applicant is requesting to vacate a 20-foot utility easement that runs along the shared boundary lines of Lot 4 and 5 to the north and Lot 3 to the south of Carriage House Plaza Addition. All three lots are under the same ownership and CAP Carpet, Inc. wishes to relocate their retail carpet store on this site, utilizing the existing easement as buildable land.

Based upon the information available prior to the public hearing, staff recommends the MAPC make the following findings and recommendation to the City Council:

- A. That after being duly and fully informed as to fully understand the true nature of this petition and the propriety of granting the same, the MAPC makes the following findings:
1. That due and legal notice has been given by publication as required by law, by publication in the Daily Reporter of notice of this vacation proceeding one time May 2, 2000, which was at least 20 days prior to this public hearing.
  2. That no private rights will be injured or endangered by the vacation of the above-described utility easement, and the public will suffer no loss or inconvenience thereby.
  3. In justice to the petitioner(s), the prayer of the petition ought to be granted.
- B. Therefore, the vacation of the utility easement described in the petition should be approved, subject to the following condition:
1. The applicant shall submit a restrictive covenant that ties Lots 4, 5, and 6 together.

The Subdivision Committee recommends approval subject to the following condition:

1. The applicant shall submit a restrictive covenant that ties Lots 4, 5, and 6 together.

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- 4/4. VAC2000-000011** - Smithmoor Associates, LLC, c/o Grant Tideman and Austin Miller, P.A. c/o Kim Edgington requests to vacate a portion of access control, described as:

The east 10 feet of the west 185 feet of Harry Street access control, Lot 1, Smithmoor Commercial Addition. Generally located south of Harry and east of Smithmoor.

Reason for request: To adjust access control to fit site layout and usage.

The applicant is requesting to vacate a portion of access control along Harry to adjust driveway access for the proposed development on this site.

Based upon the information available prior to the public hearing, staff recommends the MAPC make the following findings and recommendation to the City Council:

- A. That after being duly and fully informed as to fully understand the true nature of this petition and the propriety of granting the same, the MAPC makes the following findings:
1. That due and legal notice has been given by publication as required by law, by publication in the Daily Reporter of notice of this vacation proceeding one time May 2, 2000, which was at least 20 days prior to this public hearing.
  2. That no private rights will be injured or endangered by the vacation of the above-described access control, and the public will suffer no loss or inconvenience thereby.
  3. In justice to the petitioner(s), the prayer of the petition ought to be granted.
- B. Therefore, the vacation of a portion of access control described in the petition should be approved.

The Subdivision Committee recommends approval.

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- 4/5. **VAC2000-00012** - Clarence Lieber and Austin Miller, P.A., c/o Kim Edgington request to vacate a portion of a front building setback, described as:

The west 15 feet of the east 35 feet of Lot 1, Lieber Addition, Wichita, Sedgwick County, Kansas. Generally located on the west side of Hydraulic between 2<sup>nd</sup> and 3<sup>rd</sup> Streets.

**REASON FOR REQUEST:** To accommodate potential purchaser of property for business expansion.

The applicant is requesting to 15 feet of a 35-foot building setback along Hydraulic for future expansion of the existing business. This reduction in building setback would leave 20 feet of front setback, which is the same as the required front setback in the "GC" zoning district.

Based upon the information available prior to the public hearing, staff recommends the MAPC make the following findings and recommendation to the City Council:

- A. That after being duly and fully informed as to fully understand the true nature of this petition and the propriety of granting the same, the MAPC makes the following findings:
1. That due and legal notice has been given by publication as required by law, by publication in the Daily Reporter of notice of this vacation proceeding one time May 2, 2000, which was at least 20 days prior to this public hearing.
  2. That no private rights will be injured or endangered by the vacation of the above-described portion of a front building setback, and the public will suffer no loss or inconvenience thereby.
  3. In justice to the petitioner(s), the prayer of the petition ought to be granted.
- B. Therefore, the vacation of a portion of front building setback described in the petition should be approved.

The Subdivision Committee recommends approval.

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- 4/6. **VAC2000-00013** - K-DA, Inc., c/o Boyd Johnson, Austin Miller, P.A., c/o Kirk Miller request to vacate a portion of access control, described as:

The east 7 feet of Kellogg Frontage access control, Lot 2, Block 1, Carriage House Plaza 4th Addition, Wichita, Sedgwick County, Kansas. Generally located north of Kellogg Frontage and west of Woodchuck

**REASON FOR REQUEST:** To adjust access control to fit site layout and usage.

The Applicant is requesting to vacate 7 feet of access control along Kellogg frontage road for a shared access point between Lots 2 and 4. This seven feet is in addition to the existing 50 feet of driveway opening allowed for the shared access point.

Based upon the information available prior to the public hearing, staff recommends the MAPC make the following findings and recommendation to the City Council:

- A. That after being duly and fully informed as to fully understand the true nature of this petition and the propriety of granting the same, the MAPC makes the following findings:
1. That due and legal notice has been given by publication as required by law, by publication in the Daily Reporter of notice of this vacation proceeding one time May 2, 2000, which was at least 20 days prior to this public hearing.
  2. That no private rights will be injured or endangered by the vacation of the above-described access control, and the public will suffer no loss or inconvenience thereby.
  3. In justice to the petitioner(s), the prayer of the petition ought to be granted.
- B. Therefore, the vacation of a portion of access control described in the petition should be approved.

The Subdivision Committee recommends approval.

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Item taken out order:

- 4/2. **VAC2000-00009** - Auburn Hills, Inc., c/o Jay Russell (owner); Steve Seiler (contract purchaser) and Savoy, Ruggles & Bohm, P.A., request to vacate a portion of a 30-foot drainage and utility easement, described as:

The West 10 feet of the east 30 feet of Lot 5, Block C, Auburn Hills 2nd Addition, Wichita, Sedgwick County, Kansas. Generally located ½ mile south of Maple and ½ mile east of 135<sup>th</sup> Street West (12817 Hendryx Court).

REASON FOR REQUEST: Construction of home with covered deck.

The applicant is requesting to vacate the west 10 feet of a 30-foot drainage and utility easement that runs along the rear property line of the subject property. The site is currently vacant, but the contract purchaser wishes to build a home with a covered deck that would extend into the existing easement. Additionally, the applicant would like to place a water-well for landscaping in the easement to be vacated.

Based upon the information available prior to the public hearing, staff recommends the MAPC make the following findings and recommendation to the City Council:

- A. That after being duly and fully informed as to fully understand the true nature of this petition and the propriety of granting the same, the MAPC makes the following findings:
1. That due and legal notice has been given by publication as required by law, by publication in the Daily Reporter of notice of this vacation proceeding one time May 2, 2000, which was at least 20 days prior to this public hearing.
  2. That no private rights will be injured or endangered by the vacation of the above-described utility and drainage easement, and the public will suffer no loss or inconvenience thereby.
  3. In justice to the petitioner(s), the prayer of the petition ought to be granted.
- B. Therefore, the vacation of a portion of a drainage and utility easement described in the petition should be approved, subject to the following condition:
1. The applicant shall maintain the existing surface swale for surface drainage.

The Subdivision Committee recommends approval subject to the following condition:

1. The applicant shall maintain the existing surface swale for surface drainage.

**MOTION:** That the Planning Commission recommend to the governing body that the request be approved.

**JOHNSON** moved, **OSBORNE-HOWES** seconded the motion, and it carried unanimously (11-0-1). McKay abstained.

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**ZONING:**

5. **Case No. CON2000-00013** - Jim Wirths (Owner/Applicant); Baughman Company, PA c/o Russ Ewy (Agent) request a Conditional Use to allow sand and gravel extraction on property described as:

Beginning at a point on the North line of the Northwest Quarter of Section 22, Township 26 South, Range 1 West, of the 6th P.M., Sedgwick County, Kansas, said point being 776 feet West of the Northeast corner of said Northwest Quarter; thence South parallel to the East line of said Northwest Quarter on an assumed bearing of S 02 degrees 42'21"E a distance of 782.05 feet; thence N 89 degrees 59'54"E parallel to the North line of said Northwest Quarter a distance of 297.60 feet; thence S 02 degrees 41'41"E, 791.29 feet; thence S 88 degrees 51'17"W, 839.09 feet to a point on the West line of the East Half of said Northwest Quarter; thence N 02 degrees 27'09"W on the West line of the East Half of said Northwest Quarter a distance of 929.79 feet; thence N 89 degrees 59'54"E parallel to the North line of said Northwest Quarter a distance of 330 feet; thence N 02 degrees 27'09"W parallel to the West line of the East Half of said Northwest Quarter a distance of 660 feet to a point on the North line of said Northwest Quarter; thence N 89 degrees 59'54"E, 205.23 feet to the point of beginning, subject to road right-of-way on the North; TOGETHER WITH a tract described as follows: Beginning at a point on the East line of the Northwest Quarter of Section 22, Township 26 South, Range 1 West of the 6th P.M., Sedgwick County, Kansas, said point being 782.05 feet of the Northeast corner of said Northwest Quarter; thence South on the East line of said Northwest Quarter on an assumed bearing of S 02 degrees 42'21"E a distance of 1817.59 feet to the Southeast corner of said Northwest Quarter; thence S 88 degrees 50'50"W on the South line of said Northwest Quarter a distance of 478.40 feet; thence N 02 degrees 41'41"W, 1827.20 feet; thence N 89 degrees 59'54"E parallel to the North line of said Northwest Quarter a distance of 478.40 feet to the point of beginning; TOGETHER WITH a tract described as follows: Beginning at a point on the West line of the East Half of the Northwest Quarter of Section 22, Township 26 South, Range 1 West, of the 6th P.M., Sedgwick County, Kansas, said point being 1589.79 feet South of the Northwest corner of the East Half of said Northwest Quarter; thence South on the West line of the East Half of said Northwest Quarter on an assumed bearing of S 02 degrees 27'09"E a distance of 1035.91 feet to the Southwest corner of the East Half

of said Northwest Quarter; thence N 88 degrees 50'50"E on the South line of said Northwest Quarter a distance of 843.47 feet; thence N 02 degrees 41'41"W, 1035.91 feet; thence S 88 degrees 51'17"W, 839.09 feet to the point of beginning. Generally located south of 53<sup>rd</sup> Street North and east of Ridge Road.

**SCOTT KNEBEL**, Planning staff, pointed out land use and zoning; and showed slides of the general area. He reviewed the following staff report:

**BACKGROUND:** The applicant is requesting a Conditional Use to allow sand and gravel extraction on a 60 acre unplatted tract located south of 53<sup>rd</sup> Street North and east of Ridge Road. The subject property is zoned "SF-20" Single Family Residential.

The attached site plan shows that the proposed sand and gravel extraction operation would create a 20-acre lake. The operational plan shows a fence around the perimeter of the entire property. Storage of equipment and material would not be permitted within 250 feet of the south property line, 150 feet of the north property line, and 100 feet of the east and west property lines. The redevelopment plan shows that one single-family residence is proposed for the site north of the lake.

The subject property is within a zone likely to have groundwater at some or all times within 10 feet of the ground surface elevation. Also, information pertaining to wetlands from the Sedgwick County Soil Conservation District and Soil Survey of Sedgwick County indicates that the site does not contain soil commonly associated with wetlands.

The property east, west, and south of the site is zoned "SF-20" Single Family Residential, and the property north of the site is zoned "RR" Rural Residential. The property to the east is used for agriculture, and the property to the north and west is developed with single family residences or manufactured homes on large rural lots (2+ acres). The property to the south is developed at suburban densities (1/3 of an acre platted lots) with single family residences and manufactured homes served by septic systems.

**CASE HISTORY:** The site is unplatted.

**ADJACENT ZONING AND LAND USE:**

|                |                                   |
|----------------|-----------------------------------|
| NORTH: "RR"    | Agriculture; Single Family        |
| SOUTH: "SF-20" | Single Family; Manufactured Homes |
| EAST: ""SF-20" | Agriculture                       |
| WEST: "SF-20"  | Single Family; Manufactured Homes |

**PUBLIC SERVICES:** This site has access to 53<sup>rd</sup> Street North, a two-lane paved section line road. 53<sup>rd</sup> Street North has current traffic volumes of approximately 2,500 average daily trips. The 2030 Transportation Plan estimates that these volumes will increase to approximately 8,500 average daily trips. Municipal water and sewer services are not currently available to serve this site, and the site is located outside the 30-year urban service area. Use of the site for sand and gravel extraction and, subsequently, one single-family residence can be supported by on-site water and sewer service.

**CONFORMANCE TO PLANS/POLICIES:** The Land Use Guide of the recently adopted update to the Wichita/Sedgwick County Comprehensive Plan identifies this area as appropriate for "Rural" development, which accommodates agricultural uses as well as other uses common in rural areas, such as sand and gravel extraction, that are no more offensive than normal agricultural uses. In the "Rural" category, large lot residential uses, as proposed in the redevelopment plan, should be developed with provisions for future water and sewer services.

**RECOMMENDATION:** Based upon information available prior to the public hearings, planning staff recommends that the request be APPROVED, subject to the following conditions:

1. The applicant shall submit an operational plan for the area to be excavated. The extraction of sand and gravel on the site shall proceed in accordance with the operational plan approved by the MAPC. The perimeter of the lake excavation shall conform to the approximate size and shape indicated on the approved plan.
2. In order to assist in the enforcement of the operational plan, the applicant shall post a copy of the approved operational plan in the sand and gravel extraction office.
3. The applicant shall submit a development plan showing how the site could be subdivided into approximately one acre lots served by on-site water wells and septic systems. The development plan should show the lots located south and east of the lake and accessed by local streets extending from 49<sup>th</sup> Street North.
4. Adjacent to all property lines of the application area, as indicated on the approved operational plan, a minimum 60-inch-high fence shall be constructed prior to the beginning of any extraction operation. The fence and existing hedgerows shall be maintained at the locations depicted on the approved operational plan. Said fence shall be placed on steel posts, which are not less than 7 feet tall. The posts shall not be set more than 16 feet apart.

The fence shall be a minimum height of 60 inches and shall be of the following types of construction:

- A. A 48-inch-high or higher chain link fence with 3 or more strands of barbed wire; or
- B. A 48-inch-high or higher solid metal or solid masonry fence with 3 or more strands of barbed wire; or
- C. A 48-inch-high or higher wood fence which may have cracks or openings not in excess of 5% of the area of such fence, with 3 or more strands of barbed wire.

The term "barbed wire" shall mean any twisted wire with barbs spaced a minimum of 4 inches apart and placed at the top of the fence and gate at an angle not to exceed 160° facing away from the excavation.

- 5. The sand and gravel shall be extracted to at least a minimum depth of 6 feet below the normal water table, as determined by the Wichita-Sedgwick County Health Department.
- 6. To provide for bank stabilization and safety of future uses, the side slopes of the extraction shall be no more steep than five horizontal to one vertical.
- 7. Sufficient overburden material shall be retained in the area of extraction to grade and construct the banks so they are formed with overburden material rather than sand.
- 8. The applicant shall submit a restrictive covenant to the Planning Department in a form satisfactory to the County's legal counsel, prior to the commencement of any sand and gravel extraction operation, providing that no foreign matter, such as rubbish, trees, car bodies, etc., shall be deposited on the application area or within the extraction area.
- 9. No commercial recreational activities, such as boating, fishing, skiing, etc., shall be permitted in the area, unless duly authorized under provisions of the Unified Zoning Code and amendments thereto.
- 10. All slopes shall have vegetative covering consisting of a perennial drought-resistant grass or combination of grasses which will permit the establishment of sod cover to help prevent erosion.
- 11. To minimize blowing soil in this area, overburden shall not be removed more than six months in advance of the lake being expanded into an area, unless the ground is covered within the next planting season with a perennial drought-resistant grass or combination of which will permit the establishment of sod cover to help prevent erosion.
- 12. The storage of equipment or stockpiling of sand is not permitted closer than within 250 feet of the south property line, 150 feet of the north property line, and 100 feet of the east and west property lines.
- 13. Nothing in the approval of this request shall be construed to permit a contractor's material and equipment storage yard. Within 60 days after completion of the sand extraction operation, the land surrounding the lake shall be properly graded and planted with a vegetative cover. Also, all stockpiled sand, sand pumping and related equipment shall be removed from the subject site.
- 14. The approval of the Conditional Use is for a period not to exceed five years from the date of approval by the MAPC and/or the Board of County Commissioners and subject operation is to cease after that period of time with all equipment and materials associated with the operation removed from the premises. As part of the required operational plan, the applicant shall divide the site into 2 distinct areas for the purpose of showing phased excavation over time. The plan would show which area was to be excavated and at what time.
- 15. Hours of operation for the sand extracting business shall be limited to 6:00 a.m. to sunset.
- 16. All on-site water and sewerage facilities shall be approved by and constructed to the standards of the Wichita-Sedgwick County Health Department.
- 17. Any water wells needed to operate the facility must comply with the Water Well Construction Standards contained in Article 30 of the Kansas Department of health and Environment rules and regulations.
- 18. The applicant shall make the site available to the Wichita-Sedgwick County Health Department for the installation and management of groundwater monitoring wells.
- 19. Any on-site storage of fuels or chemicals must be approved by the Wichita Sedgwick County Health Department.
- 20. A drainage plan shall be submitted to and approved by the Sedgwick County Bureau of Public Works prior to starting the sand and gravel extraction. All of the area included within the fenced sand extraction operation shall be graded in accordance with the approved drainage plan.
- 21. The applicant shall be responsible for maintaining all operational roads in a sand or graveled condition and shall apply water or other acceptable dust retardant to minimize blowing dust.

22. The applicant shall obtain and maintain all applicable local, state, and federal permits necessary for the sand and gravel extraction operation.
23. The applicant shall dedicate by separate instrument right-of-way for 53<sup>rd</sup> Street North pursuant to Article 7-201(H) of the Wichita-Sedgwick County Subdivision Regulations.
24. The applicant shall dedicate by separate instrument a public drainage easement pursuant to Article 7-205(B) of the Wichita-Sedgwick County Subdivision Regulations.
25. Any violation of the conditions of approval shall declare the Conditional Use null and void.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: The property east, west, and south of the site is zoned "SF-20" Single Family Residential, and the property north of the site is zoned "RR" Rural Residential. The property to the east is used for agriculture, and the property to the north and west is developed with single family residences or manufactured homes on large rural lots (2+ acres). The property to the south is developed at suburban densities (1/3 of an acre platted lots) with single family residences and manufactured homes served by septic systems.
2. The suitability of the subject property for the uses to which it has been restricted: The site is currently used for agriculture and this use could continue given the agricultural character of the area.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: Any detrimental affects should be minimized by the various setback requirements and operational restrictions required as conditions of approval.
4. Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies: The Land Use Guide of the recently adopted update to the Wichita/Sedgwick County Comprehensive Plan identifies this area as appropriate for "Rural" development, which accommodates agricultural uses as well as other uses common in rural areas, such as sand and gravel extraction, that are no more offensive than normal agricultural uses. In the "Rural" category, large lot residential uses, as proposed in the redevelopment plan, should be developed with provisions for future water and sewer services.
5. Impact of the proposed development on community facilities: The development of this property as a sand and gravel extraction operation should not have a significant impact on community facilities. On-site water and sewer services will be required to serve this site.

**KNEBEL** "This is a Conditional Use request to allow sand and gravel extraction on a 60-acre unplatted tract. This site is currently undeveloped. The site plan that is provided and attached to your back-up material shows that the extraction operation would create approximately a 20-acre lake and would be fenced in its entirety with a chain-link fence with barbed wire. There are pretty good setbacks over and above those that are typically required for the storage of materials, especially to the south where it is developed with residential properties.

The redevelopment plan that is presented shows that the property owner is proposing to redevelop the site with a single residential structure upon the completion of the sand extraction operation. The Land Use Guide indicates that this area is appropriate for rural development, which is intended to accommodate agricultural uses as well as other uses that are common in rural areas, such as resource removal like sand and gravel extraction.

Planning staff has recommended approval of this application subject to the standard conditions that are typically approved with the exception of a couple of items that I will address individually. Item No. 3 indicates that the Planning staff would like to see a redevelopment plan that provides greater options for redeveloping this site by basically extending the suburban style development that exists south of this site, to the south and east side of the existing lake, rather than just proposing redevelopment of this entire site with one house.

Also, on Item No. 14, this is typically the item that is subject to some negotiation. I know the applicant is going to ask for a greater time period for the Conditional Use. Planning staff is recommending 5 years. Then on Items 23 and 24, I don't believe Item No. 23 is going to be contested by the applicant, basically requesting a dedication of right-of-way for 53<sup>rd</sup> Street North, and then also requesting dedication of a public drainage easement so that the lake can be used for detention purposes in the future as this area develops at suburban density residential. I am available for questions."

**GAROFALO** "I have a question. I haven't had the opportunity to go out and take a look at that area. How close is the residential, and how much residential is there?"

**KNEBEL** "The nearest residential properties are located approximately 250 feet to the south. That is where the greatest number of them are. There are also a few residences located to the west of the site, but there are fewer numbers of them. I can show you here on the aerial. (Indicating) Probably these properties right in here would be the most affected. These properties are also developed residentially, but they are a little bit further away."

**GAROFALO** "How close to the west?"

**KNEBEL** "I think they were proposing a setback along the west property line of 100 feet, and then you have this one, or maybe there are two houses there, I can't recall, that are within a few hundred feet of the lake."

**GAROFALO** "Okay. The other question I had was on the operation time. You are talking about sunrise, 6:00 a.m. and that would be pretty early to me, to sunset, which is pretty late in the summertime, I think. Sunset in the middle of summer is like 9:30, almost is now. I thought that was kind of late."

**KNEBEL** "The Planning staff is not recommending any different hours of operation for this particular sand plant, but it is certainly for the Planning Commission to consider."

**MARNELL** "On the operational plan, you showed the plant site. Is there anything that locks that to that location, or could that move all the way down to the south end?"

**KNEBEL** "I think the only factor that they would be concerned with, and you probably would have to ask the applicant, would be the cost of the road on the site itself. But you are talking about having access to 49<sup>th</sup> Street, or what?"

**MARNELL** "No, I am talking about putting a sand plant next to residential property. It seems like it is quite a ways away there, but there is nothing in here that would restrict them from moving the plant itself down rather than just the siphoning operation. That's where all of the trucks and noise and activity is."

**KNEBEL** "They would be held to this plan here. The plant site would need to be located there if it were approved as such."

**MARNELL** "If we approve this, it will stay there?"

**KNEBEL** "Right."

**MARNELL** "Closer to the residential."

**KNEBEL** "Right."

**LOPEZ** "I don't remember if you were here, you can refresh my memory, but there was quite a bit of discussion about the approval of new open pits because of water."

**KNEBEL** "Right. We had that previously. The discussion down on Hydraulic at 111<sup>th</sup> Street regarding water rights and the fact that sand plants are required to acquire water rights. That would be the case in this. That is addressed through one of the conditions. It requires them to get all federal, state and local permits before operating."

**LOPEZ** "But the other concern, if I remember right, is the opening up of new sand extraction operations. A lot of the discussion was about the amount of water evaporation."

**KNEBEL** "Right. And that is regulated by the state Department of Water Resources. The applicant is required to receive a water right equal to the amount that would be evaporated from this site in order to operate this."

**GAROFALO** "Are there any other questions of Scott? If not, we will hear from the applicant or agent."

**RUSS EWY** "I am with the Baughman Company, agent for the applicant. As staff mentioned, we are in agreement with the majority of the very standard, and has been standard for a number of decades, the conditions of these types of Conditional Use permits."

As staff indicated, we would have questions with only three of these standard conditions, the first being Condition No. 3. I would probably stand to improve myself by having the opportunity to practice my sketch platting. It is the intent, as a matter of fact, the origin of this Conditional Use is that this 60 acres will be for the sole private use of the private residence of the applicant. He wanted a recreational lake and contacted a sand extraction operator and it seemed to be a pretty good trade-off. The sand for the amenity, but I guess all things being considered, we have no problem in doing a sketch design for one-acre parcels, although I would doubt that we would have the ability, with the groundwater in this area to be permitted building permits for one-acre sites. I am not sure about the subdivision to the south of us, how that was ever permitted, but I would guess under today's guidelines that we would have a difficult time doing one-acre lots. We can discuss that with staff.

The second concern and probably the only one that we are really asking for a departure from staff comment is on Item No. 14. It has been my experience with most Conditional Use permits of this nature that there is a typical 10-year time frame to them. I think that has been a very reasonable time frame to actually extract this volume of material. I think 12 years is what we had originally asked for, we considered 10 years as being the norm. I think that would prevent what would ultimately occur 5 to 6 years down the road, another amendment to this Conditional Use case, for the sole purpose of extending the time frame.

I think that there is built into these conditions adequate oversight for the operation of this sand extraction operation, so I believe that the county would have the ability to monitor this site through several of the conditions. I don't believe it is

necessary for this type of application to come back. What we would contest would be somewhat of a wasteful application."

**WARREN** "What are you asking for in Item No. 14 instead of 5 years?"

**EWY** "We are asking for 12 years. The only other question I would have; not having ever seen this before as a condition of these sand extraction operations, is dedication, if you will, of the drainage easement. I think in reading through the subdivision regulations, one looks at that sub section as obviously allowing for or creating the requirement that when one subdivides large tracts of lands for suburban development, one has to account for their drainage, typically through a detention pond. Again, this is somewhat new to me, so I am basically asking for a little bit more information from staff concerning Condition No. 24.

I think Scott did a good job of answering any type of site plan specific information. Of course, one sees the 100-foot setbacks on the east and west and 250-foot setbacks on the north and south, as basically containing our excavation site. However, as the site plan obviously shows, our sand plant operation, the operation which trucks will be coming to and will be generating whatever noise generated, will be located in the middle of the site at the farthest point away from any type of residential development. So we are in the range of 500 to 800 feet away from homes with the sand plant extraction operation itself.

Obviously, we link up to 53<sup>rd</sup> Street through the north with complete access control for any type of sand operations on this residential dirt street here. I would be more than happy to answer any questions."

**GAROFALO** "I read all of this, but would the road going into the plant be paved?"

**EWY** "Yes. It is required to be paved and maintained in a dust-free manner."

**GAROFALO** "That is what I thought. Okay, thanks. Are there any other questions? Is there anyone else here to speak in favor of this application? Is there anyone to speak in opposition?"

**MIKE MILLER** "I live at 5002 North Ridge Road. I also own 5016 North Ridge Road and 5026 North Ridge Road. What I am asking is that later on they are talking about putting houses back there and using 49<sup>th</sup> Street for an entrance. Forty-ninth Street from Ridge going east, the first 620 feet is a one-lane road, not two. What do they propose to do about that if they are putting houses in? That is the only thing I have a question about. If they are going to put additional traffic on 49<sup>th</sup> Street, I am opposed to it. If there is going to be no traffic later on, I don't have a problem with it."

**GAROFALO** "Okay. The applicant has an opportunity to come up again and he can address that. Does anyone have questions of the speaker? Mr. Miller, I have a question. Is that your only concern? You are not opposed to this kind of an operation?"

**MIKE MILLER** "Not if there is no increased traffic on 49<sup>th</sup> Street. I am opposed to it if they are increasing traffic on 49<sup>th</sup> Street."

**GAROFALO** "Right now, they are apparently not."

**MIKE MILLER** "But in ten to twelve years, they are talking about putting in one-acre lots and using 49<sup>th</sup> Street as an entrance. I am opposed if they are going to do that."

**GAROFALO** "Okay, thank you. Is there anyone else to speak in opposition? Step to the podium, state your name and address, please."

**BRAD STOSKOPF** "I live at 6415 West 53<sup>rd</sup> Street, which is the property to the far north and east. I basically just had a couple of questions. One of them I think was answered. That was relative to the entrance from 53<sup>rd</sup> Street, as to whether or not that was going to be a paved access. I think I just heard that that would be the case.

My other case was regarding the duration of the extraction process. I was looking at the 5-year date and wondering if that would be extended to a 10 or 12 year period. Those are basically the only two concerns that I had."

**GAROFALO** "Okay, then otherwise you are not, per se, opposed to this operation?"

**STOSKOPF** "Not necessarily opposed. I might have the same question as Mr. Miller in that would the access from 53<sup>rd</sup> Street be utilized for future lot development? That might be another question posed, similar to his concern off of 49<sup>th</sup> Street."

**GAROFALO** "Can you point out exactly where you live on that aerial there?"

**STOSKOPF** (Indicating) "The far northeast section."

**OSBORNE-HOWES** "Are you saying that you support 5 years and don't support 10 or 12 years?"

**STOSKOPF** "I would question 10 and 12 years, yes."



**GAROFALO** "Are there any other questions? Okay, thank you, sir. Is there anyone else to speak in opposition? Okay, then Russ will have two minutes for rebuttal. You might want to try to answer some of those questions."

**EWY** "Absolutely. I just learned from the applicant, who has been working with the Equus beds management people. I think there was a concern stated concerning evaporation, which always comes up. Typically we have members of the Equus Bed Board come to speak to this body on these types of applications. The applicant has been in through the permitting process in order to get water rights to excavate to 20 acres. As we found out in meeting with their staff that they are much less concerned about bodies of open water as it affects the Equus Beds as they are from agricultural irrigation wells, which extracts and depletes the Equus Beds at a substantially high rate.

So I think that by witnessing the fact that they are not here that they are less concerned of this particular type of operation. Again, I guess that we would ask then, for a 10 year extension instead of 12 years, due to the fact that that is going to be a limitation on us by the Equus Beds management people. But we are again stating that we feel that we would not be finished excavating the site within 5 years, which would necessitate expenditure on the applicant's part to file an amendment to this Conditional Use case. I am not sure what would be the benefit of that.

Again, there are some types of Conditional Use cases that warrant oversight by this body because of its nature. I think there are other regulatory agencies that will have oversight as it relates to this sand operation. We just offer that out for your consideration. Again, we obviously have no interest to having access to 49<sup>th</sup> Street with the sand extraction operation, and likewise we have no intention of subdividing this into residential lots, which would come down on 49<sup>th</sup> Street. So I think we are meeting the needs of the people to the south also. I will stand for any other questions."

**OSBORNE-HOWES** "Let me make sure that it says something in here about no access to 49<sup>th</sup> Street."

**EWY** "On the site plan, yes, we are showing complete access control except for an emergency opening, obviously."

**OSBORNE-HOWES** "Just because he isn't planning on developing, it doesn't mean that an owner in the future wouldn't."

**EWY** "Absolutely, and an owner in the future will have to come in and plat the property to gain those one-acre lots. I believe a lot of these issues would be raised appropriately at that stage, if that would ever occur."

**BARFIELD** "Okay, you said that you would be talking about a 10 year extension, or are you talking about making the term not to exceed 10 years?"

**EWY** "Make the term not to exceed 10 years."

**KROUT** "I may have stepped out for a minute, but there was a reference to paved access. We don't require a paved access, just an all-weather road."

**EWY** "That is what we are talking about, yes. Just maintained in a dust-free environment, which means on hot August and July days that that road, if truck traffic warrants is blowing dust, we would obviously have to water that road down."

**KROUT** "I just wanted to make sure that the neighbor understood that paving was not something that was required by these conditions and not something that they said they were going to do."

**EWY** "We will have an improved road per the conditions that staff recommended. We will not be providing an asphalt mat road. I want to make that perfectly clear."

**BARFIELD** "Can you be a little bit more specific, even though it says hours of operation 6:00 a.m. to sunset, can you be a little bit more specific about what hours they will be in operation?"

**EWY** "I can't. Every Conditional Use that I have ever seen pass through here, those were the standard operating hours. Again, as staff commented in their presentation, we would be looking for the same allowance as any other operation. Again, knowing that we are well removed from the residences in the area."

**OSBORNE-HOWES** "I really did think I heard you say that it would be paved access. Where did I hear that?"

**EWY** "I could have said that, it is a standard condition that you have to have an all-weather road."

**OSBORNE-HOWES** "No, I mean I heard someone say paved road? Where did I hear that?"

**GAROFALO** "I asked if the road was going to be paved, and you said yes."

**OSBORNE-HOWES** "Yeah, because someone who came up to speak also heard that."

**EWY** "Then I misspoke and obviously retract that. As far as providing an asphalt mat road. I will pave the road to the standard that has always been expected in these types of uses, which is an all-surface road. That road is to be maintained according to these standards."

**GAROFALO** "Are there any other questions? Thank you. We will bring it back to the Commission. "

**MCKAY** "I have a question of staff. Staff, why No. 24? It talks about a drainage plan for the whole area."

**KROUT** "It must be that when Russ was working for us he didn't pick up the fact that in almost all of our Conditional Uses, we required a drainage easement for potential future detention purposes and have done that at this time, rather than at platting time because there may need to be detention in a watershed prior to the lots surrounding a lake like this being developed. In fact, particularly in this area, which is the drainage basin of the Big Slough, you may have heard that the County Commission has held up the zoning case now for four weeks and is going to be getting the City and County Engineers and developers in this area working on an overall drainage plan. There could well be retention as part of that plan. So these lakes are potential resources for detention as well as potential amenities for future lots and development.

We may have missed one or two, particularly Russ may have missed one or two when he was doing Conditional Uses for us, but this has been a standard condition and if Jim Weber was still here he would probably tell you that yes, he thinks that this is important for the County."

**OSBORNE-HOWES** "Just two quick questions. Why did staff say 5 years? Is there a particular reason for that, and then secondly, on hours of operation, I know that, don't know whether it is the Board of Zoning Appeals or here, but I know that I have seen several with reduced operating hours, like maybe 7:00 to...whatever."

Marnell left the meeting at 4:10 p.m.

**LOPEZ** "On that same thing, and I was going to ask Marvin, we have approved these requests for extraction pits before, and I was trying to remember, at those times, wasn't the limit 5 years?"

**KROUT** "Well, I think that the number of years has varied, and the large part of it, I think, has to do with the size of the lake, and the proximity of nearby residential. Most of the areas where you have approved long periods of time have been larger lakes and larger operations. We just wanted to try to encourage it to be done in a relatively speedy time so there would be less impact for the surrounding property owners and less number of years that they are out there. We could go back and take a look at the acres of lake versus the years of operation that have been approved in the past, but I think that this is a lesser size operation than somebody else that you have approved with 10 year programs."

**OSBORNE-HOWES** "And what about hours of operation?"

**KROUT** "They have varied, and this is the most typical."

**GAROFALO** "Does anybody else have any questions? Okay. Then what is the pleasure?"

**MOTION:** Having considered the factors as contained in Policy Statement No. 10; taking into consideration the staff findings (The zoning, uses and character of the neighborhood: The property east, west, and south of the site is zoned "SF-20" Single Family Residential, and the property north of the site is zoned "RR" Rural Residential. The property to the east is used for agriculture, and the property to the north and west is developed with single family residences or manufactured homes on large rural lots (2+ acres). The property to the south is developed at suburban densities (1/3 of an acre platted lots) with single family residences and manufactured homes served by septic systems. The suitability of the subject property for the uses to which it has been restricted: The site is currently used for agriculture and this use could continue given the agricultural character of the area. Extent to which removal of the restrictions will detrimentally affect nearby property: Any detrimental affects should be minimized by the various setback requirements and operational restrictions required as conditions of approval. Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies: The Land Use Guide of the recently adopted update to the Wichita/Sedgwick County Comprehensive Plan identifies this area as appropriate for "Rural" development, which accommodates agricultural uses as well as other uses common in rural areas, such as sand and gravel extraction, that are no more offensive than normal agricultural uses. In the "Rural" category, large lot residential uses, as proposed in the redevelopment plan, should be developed with provisions for future water and sewer services. Impact of the proposed development on community facilities: The development of this property as a sand and gravel extraction operation should not have a significant impact on community facilities. On-site water and sewer services will be required to serve this site.) I move that we recommend to the governing body that the request be approved, subject to the following:

1. The applicant shall submit an operational plan for the area to be excavated. The extraction of sand and gravel on the site shall proceed in accordance with the operational plan approved by the MAPC. The perimeter of the lake excavation shall conform to the approximate size and shape indicated on the approved plan.
2. In order to assist in the enforcement of the operational plan, the applicant shall post a copy of the approved operational plan in the sand and gravel extraction office.

3. The applicant shall submit a development plan showing how the site could be subdivided into approximately one acre lots served by on-site water wells and septic systems. The development plan should show the lots located south and east of the lake and accessed by local streets extending from 49<sup>th</sup> Street North.
4. Adjacent to all property lines of the application area, as indicated on the approved operational plan, a minimum 60-inch-high fence shall be constructed prior to the beginning of any extraction operation. The fence and existing hedgerows shall be maintained at the locations depicted on the approved operational plan. Said fence shall be placed on steel posts which are not less than 7 feet tall. The posts shall not be set more than 16 feet apart.

The fence shall be a minimum height of 60 inches and shall be of the following types of construction:

- A. A 48-inch-high or higher chain link fence with 3 or more strands of barbed wire; or
- B. A 48-inch-high or higher solid metal or solid masonry fence with 3 or more strands of barbed wire; or
- C. A 48-inch-high or higher wood fence which may have cracks or openings not in excess of 5% of the area of such fence, with 3 or more strands of barbed wire.

The term "barbed wire" shall mean any twisted wire with barbs spaced a minimum of 4 inches apart and placed at the top of the fence and gate at an angle not to exceed 160° facing away from the excavation.

5. The sand and gravel shall be extracted to at least a minimum depth of 6 feet below the normal water table, as determined by the Wichita-Sedgwick County Health Department.
6. To provide for bank stabilization and safety of future uses, the side slopes of the extraction shall be no more steep than five horizontal to one vertical.
7. Sufficient overburden material shall be retained in the area of extraction to grade and construct the banks so they are formed with overburden material rather than sand.
8. The applicant shall submit a restrictive covenant to the Planning Department in a form satisfactory to the County's legal counsel, prior to the commencement of any sand and gravel extraction operation, providing that no foreign matter, such as rubbish, trees, car bodies, etc., shall be deposited on the application area or within the extraction area.
9. No commercial recreational activities, such as boating, fishing, skiing, etc., shall be permitted in the area, unless duly authorized under provisions of the Unified Zoning Code and amendments thereto.
10. All slopes shall have vegetative covering consisting of a perennial drought-resistant grass or combination of grasses which will permit the establishment of sod cover to help prevent erosion.
11. To minimize blowing soil in this area, overburden shall not be removed more than six months in advance of the lake being expanded into an area, unless the ground is covered within the next planting season with a perennial drought-resistant grass or combination of which will permit the establishment of sod cover to help prevent erosion.
12. The storage of equipment or stockpiling of sand is not permitted closer than within 250 feet of the south property line, 150 feet of the north property line, and 100 feet of the east and west property lines.
13. Nothing in the approval of this request shall be construed to permit a contractor's material and equipment storage yard. Within 60 days after completion of the sand extraction operation, the land surrounding the lake shall be properly graded and planted with a vegetative cover. Also, all stockpiled sand, sand pumping and related equipment shall be removed from the subject site.
14. The approval of the Conditional Use is for a period not to exceed 10 years from the date of approval by the MAPC and/or the Board of County Commissioners and subject operation is to cease after that period of time with all equipment and materials associated with the operation removed from the premises. As part of the required operational plan, the applicant shall divide the site into 2 distinct areas for the purpose of showing phased excavation over time. The plan would show which area was to be excavated and at what time.
15. Hours of operation for the sand extracting business shall be limited to 6:00 a.m. to sunset.
16. All on-site water and sewerage facilities shall be approved by and constructed to the standards of the Wichita-Sedgwick County Health Department.
17. Any water wells needed to operate the facility must comply with the Water Well Construction Standards contained in Article 30 of the Kansas Department of health and Environment rules and regulations.

18. The applicant shall make the site available to the Wichita-Sedgwick County Health Department for the installation and management of groundwater monitoring wells.
19. Any on-site storage of fuels or chemicals must be approved by the Wichita Sedgwick County Health Department.
20. A drainage plan shall be submitted to and approved by the Sedgwick County Bureau of Public Works prior to starting the sand and gravel extraction. All of the area included within the fenced sand extraction operation shall be graded in accordance with the approved drainage plan.
21. The applicant shall be responsible for maintaining all operational roads in a sand or graveled condition and shall apply water or other acceptable dust retardant to minimize blowing dust.
22. The applicant shall obtain and maintain all applicable local, state, and federal permits necessary for the sand and gravel extraction operation.
23. The applicant shall dedicate by separate instrument right-of-way for 53<sup>rd</sup> Street North pursuant to Article 7-201(H) of the Wichita-Sedgwick County Subdivision Regulations.
24. The applicant shall dedicated by separate instrument a public drainage easement pursuant to Article 7-205(B) of the Wichita-Sedgwick County Subdivision Regulations.
25. Any violation of the conditions of approval shall declare the Conditional Use null and void.

**WARREN** moved, **MICHAELIS** seconded the motion.

**GAROFALO** "Is there any discussion?"

**VOTE ON THE MOTION:** The motion carried with 11 votes in favor. There was no opposition.

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6. **Case No. CON2000-00008** - Curtis Wayne Pyrant and Douglas L. Watson (Owners/Applicant) request a Conditional Use for a cemetery, on property described as:

Lots 1 and 2, Webb-31 Additional, Sedgwick County, Kansas. Generally located south of 31<sup>st</sup> Street South and west of Webb Road.

**SCOTT KNEBEL**, Planning staff, pointed out land use and zoning; and showed slides of the general area. He reviewed the following staff report:

**BACKGROUND:** The applicant is requesting a Conditional Use to develop a cemetery on an 11 acre platted tract located south of 31<sup>st</sup> Street South and west of Webb Road. The subject property is zoned "SF-20" Single Family Residential, and cemeteries are permitted with a Conditional Use in the "SF-20" district. The subject property is currently undeveloped.

The applicant has submitted a site plan that shows the cemetery located south and west of a recently constructed funeral home located at the southwest corner of 31<sup>st</sup> Street South and Webb Road. The cemetery would have access to Webb Road and would have an internal circulation road. Landscaping berms are shown along Webb Road. A future mausoleum is shown in the southwest corner of the subject property.

The surrounding property is primarily developed with a mixture of suburban residential and agricultural uses on property zoned "SF-20" Single Family Residential. The northwest, northeast, and southeast corners of the 31<sup>st</sup> Street South and Webb Road intersection are undeveloped and are zoned "LC" Limited Commercial. To the west of the subject property is a church on property zoned "SF-20" Single Family Residential.

**CASE HISTORY:** The site is platted as part of the Webb-31 Addition, which was recorded on July 15, 1999.

**ADJACENT ZONING AND LAND USE:**

|        |                |                            |
|--------|----------------|----------------------------|
| NORTH: | "SF-20" & "LC" | Agriculture                |
| SOUTH: | "SF-20"        | Agriculture, Single Family |
| EAST:  | "SF-20" & "LC" | Agriculture, Single Family |
| WEST:  | "SF-20"        | Agriculture, Church        |

**PUBLIC SERVICES:** The site has frontage to 31<sup>st</sup> Street South and Webb Road, both two-lane paved section line roads. 31<sup>st</sup> Street South has traffic volumes of approximately 2,000 vehicles per day. The 2030 Transportation Plan estimates the volume for 31<sup>st</sup> Street South will increase to approximately 5,400 vehicles per day. Webb Road has traffic volumes of approximately 3,900 vehicles per day. The 2030 Transportation Plan estimates the volume for Webb Road will increase

to approximately 5,300 vehicles per day. Municipal water and sewer services are not required for the proposed cemetery use.

**CONFORMANCE TO PLANS/POLICIES:** The Land Use Guide in the update to the Comprehensive Plan that was recently adopted by the Planning Commission indicates that the subject property is appropriate for "Low Density Residential" development. With a Conditional Use, cemeteries are permitted in residential districts. The Land Use Guide also indicates that the subject property is on the fringe of the 10-year urban service area.

**RECOMMENDATION:** Based upon information available prior to the public hearings, planning staff recommends that the request be APPROVED, subject to the following conditions:

1. The site shall be developed in general conformance with the approved site plan. All improvements shall be completed before the facility becomes operational.
2. Any violation of the conditions of approval shall render the Conditional Use null and void.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: The surrounding property is primarily developed with a mixture of suburban residential and agricultural uses on property zoned "SF-20" Single Family Residential. The northwest, northeast, and southeast corners of the 31<sup>st</sup> Street South and Webb Road intersection are undeveloped and are zoned "LC" Limited Commercial. To the west of the subject property is a church on property zoned "SF-20" Single Family Residential.
2. The suitability of the subject property for the uses to which it has been restricted: The property is zoned "SF-20" Single Family Residential. With a Conditional Use, a cemetery is permitted in the "SF-20" district.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: The development standards of the Unified Zoning Code should limit any detrimental affects of the proposed use on nearby property.
4. Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies: The Land Use Guide in the update to the Comprehensive Plan that was recently adopted by the Planning Commission indicates that the subject property is appropriate for "Low Density Residential" development. With a Conditional Use, cemeteries are permitted in residential districts. The Land Use Guide also indicates that the subject property is on the fringe of the 10-year urban service area.
5. Impact of the proposed development on community facilities: The use of this property should have limited impact on community facilities.

**KNEBEL** "This Conditional Use application area actually includes property that is zoned 'LC' Limited Commercial; however, cemeteries are permitted use in the Limited Commercial district. This Conditional Use is only required for the portion of the subject property which is outlined here (indicating), which is zoned 'SF-20'. The applicant has submitted a site plan which is attached to your staff report, which shows that the cemetery is located behind a recently constructed funeral home at the southwest corner of 31<sup>st</sup> Street South and Webb Road. The cemetery would have access to Webb Road and would have an internal circulation road. Landscaping berms would be provided along Webb Road and a future mausoleum is proposed for the southwest corner of the site.

Surrounding property is developed with a mixture of suburban residential and agricultural uses. In addition, all four corners are zoned for Limited Commercial and only the southwest corner is developed with the funeral home. The Land Use Guide indicates that this area is appropriate for low-density residential development in the future, and with a Conditional Use, cemeteries are permitted in residential districts. Planning staff is recommending that this proposal be approved, subject to being constructed in conformance with the site plan. I am available for questions."

**GAROFALO** "Are there any questions of Scott?"

**WARREN** "Can you go back to the aerial? The homes are primarily across the street?"

**KNEBEL** "Yes, the two closest residences are located east of Webb Road."

**GAROFALO** "Scott, where is the funeral home, will you show me?"

**KNEBEL** (Indicating) "It is right here."

**GAROFALO** "They want to put a cemetery behind it?"

**KNEBEL** "That's correct. The funeral home is basically located about right here (indicating), and then the cemetery would be within this area."

**WARREN** "You mean located on the site plan, don't you? It isn't there yet."

**KNEBEL** "It is actually open. It is there now."

**GAROFALO** "We have a picture of it."

**MICHAELIS** "I have a question. I just want to make sure, that whole corner there was 'LC', wasn't it?"

**KNEBEL** "Yes, with the exception of the extreme western and southern portion of the subject property. It is zoned 'SF-20', which necessitates the Conditional Use.

**GAROFALO** "There is quite a bit of residential. How close is it?"

**KNEBEL** "The closest is the Town Park Addition, which is in this location (indicating), south of Pawnee about half a mile."

**GAROFALO** "Are there any other questions of Scott? Okay, we will hear from the applicant or agent."

**DOUG WATSON** "I am at 3201 South Webb. One of the reasons we would like to develop this into a small cemetery, about an 8-acre cemetery and develop it so that it gives people an opportunity in especially eastern and southern parts of Wichita to have an opportunity to have something a little a little different than what is being offered now. I think it would be a great asset. We have built what I believe is a very beautiful new funeral home. I am sorry you didn't know where it was. My advertising dollars aren't working. No, we did just open two and a half weeks ago. But watch this Sunday's paper.

Anyway, I think this could be a great asset for this area. There is a church to the west of me, to the south there is one little house, it is a trailer home. Farther south, about half a mile, there are some developments of homes that are on probably 2-1/2 acre tracts, something like that, but quite a ways south. Then along 31<sup>st</sup> Street, we go back and there is really nothing. Hong's is down farther back to the west, and then you get to a dead end at McConnell. We have built a nice facility. We certainly are going to keep in line with that as we develop this cemetery. I just ask that you go with staff's recommendation and approve it. Are there any questions?"

**MCKAY** "Is the eleven acres just for the cemetery, or does that include the funeral home?"

**WATSON** "That does include the funeral home. And as I have gone through all of this and learned about platting and setbacks and everything else, actually, there are very large setbacks that come back from the road, especially at that intersection, so my facility is back from the road and there is a lot of land, meaning that there is a 75 foot easement that comes back because of pipelines, and Beech and all of that. So it sets back at the corner, but yes, that does include what the funeral home is on right now."

**WARREN** "Is there a cemetery at Greenwich? Where is that other cemetery?"

**WATSON** "There is a small cemetery that is family-owned. They are not accepting anyone. It is full. It is at Greenwich and 31<sup>st</sup>."

**WARREN** "That is just a mile east of you?"

**WATSON** "Right. It is just very small and it is full."

**GAROFALO** "Any other questions? Thank you, sir. Is there anyone else here to speak in favor of this application? Is there anyone to speak in opposition? How many, four? Okay. Step up to the podium and give your name and address. You have five minutes to speak."

**GREG BOURGEOIS** "I live at 9115 East 31<sup>st</sup>, right here (indicating). A couple of things. We had the opportunity to send in an E-mail, and Scott got that and replied back. One of the statements he made was, I asked about the potential for property devaluation in this area due to a cemetery. The funeral home is already there, so we can't talk about that. Scott came back and said he went to the appraiser's office and nothing was noted in any studies that would drop it.

Well, I turned around and went to Weigand. I picked up the phone and called them. I don't know anybody at Weigand, and I just asked them 'if you got a funeral home about half mile from your house, is that a detriment for trying to sell your house or any plan for appraisal value?' They said yes. About one-third of the people probably aren't going to be interested in going out there. So, I turned around and asked about a funeral home with a cemetery and they said 'I don't want to talk about that'. So in reference to the appraisal value, they are looking at my land, they are looking at the buildings I have on it, but as far as dropping the potential for a sale at a later date and that, I am sure the Appraiser's office isn't going to do anything about it because I do have buildings and structures on it, and I do own the land. But I question whether or not I am going to be able to sell that property someday and what the value is I will get, if I can get the money out of it.

The other questions I have are, the funeral home is not occupied, as far as I know, there are no living quarters there. I am not sure about that, but I don't believe it is going to be occupied. The church has had a lot of problems and I have had to run off kids that are running around out on 31<sup>st</sup> Street. They pull in, do doughnuts and everything in the church parking lot and cause damage, etc., so I am wondering, if we set up a funeral home if we are not going to also consider the vandalism problem. One thing that wasn't mentioned, McConnell Air Force Base was right here (indicating), and this is a

school parking lot that overlooks this area, and there is residential within half a mile to three quarters of a mile, so this picture is a little deceptive on what is there and what is not.

Also, the information that was sent out to us talked about a cemetery. I just question that there was no definition, but when I got the staff notes off the table here, there is also going to be a mausoleum built. That is going to be a focal landmark, and also cause a slight problem. I think it is planned to be right down here in this corner (indicating). I didn't get a complete information guide and I am not sure the rest of the folks got the information guide on what is truly planned at this location at this time. It wasn't until I picked up the paper here off here. There was no definition for what the cemetery entailed. I just had these questions and request your consideration. Thank you."

**GAROFALO** "Are there any questions for Mr. Burgeois?"

**WARREN** "I noticed that you have quite a long driveway there. How many acres do you have there?"

**BOURGEOIS** "I have ten acres, sir. It is broken off into two plots. We actually live on the back plot, down here. We do not share a drive with the church, but their drive is right here. This is where a lot of the vandalism is. Kids come out and sit here at night. I have one last question. Is there a zoning district designed for a cemetery? Is there a requirement for fencing or something like that? I asked that consideration, also because I didn't see that on the application or any of the information provided."

**GAROFALO** "Are there any other questions? Okay, thank you. Next speaker, please."

**MARJORIE FLEMONS** "I am speaking on behalf of my Mother, who owns land that is adjacent to the subject property we are speaking about right now. I am just going to echo some of the concerns that I heard the previous speaker express. Houses are being built in the area across there, north of 31<sup>st</sup> Street South. Development is moving that way. When my Mother bought the property, her intent was to someday build a house or have housing built on that property. My concern and her concern is how much will a cemetery devalue the property?"

There is such a thing as stigmatized real estate, stigmatized property and is this something that is going to happen to ours? That is our concern. Homeowners are going to be very reluctant, as we are, to build a house next to a cemetery. That is a very big concern of ours. Also, I would just like to echo a concern of the previous speaker. If this indeed does go forward, will there be some kind of a wall or a structure built to restrict the view and to separate our land from the mortuary? Another question I have is how close to our land, which is, again, adjacent to property that we are speaking of, will they be able to provide plots to their clients? Exactly how close are they going to be allowed to get to our particular property in that regard? Thank you."

**GAROFALO** "Ma'am, could you point out the property that your Mother owns?"

**FLEMONS** "She has ten acres, just a narrow strip that goes right along here (indicating)."

**GAROFALO** "Could you give us your address, please? I don't think you did."

**FLEMONS** "My Mother's name is Clarisa L. Flemons. She lives at 1322 North Minnesota, but she does own the land there at 31<sup>st</sup> Street South. I live in Pittsburgh, Pennsylvania."

**GAROFALO** "Are there any questions? Okay, is there anyone else to speak in opposition?"

**JAMES HARDIN** "I live at 3300 South Webb Road, directly across from here. I have 10 acres; it is depicted on the public notice. We had some concerns so we went over and talked with Mr. Watson. After we reviewed what he said and then what the application is for, we are asking the Commission not to allow it. There are several reasons that I stated in an E-mail. I hope everyone has a copy of that.

Across the street, my home value is somewhere in the neighborhood of about \$225,000, and that is not counting the land value. By this particular cemetery going in there, it is going to devalue that. I have a potential buyer for the 5 acres that is just directly south of me and that is in jeopardy because he doesn't want to build a \$200,000 home across the street from a cemetery. That wasn't the indication when we bought that land about four years ago now, that there would ever be a cemetery there. This was zoned for Limited Commercial there on that very corner. There is not anything that was on the contingency about the water value because the way the water flows across the proposed cemetery would be in direct line of where we live.

My neighbor, Leroy James, who is here, is strictly on well water. I think if you were drinking out of the water and you knew where it came from you, too, would be very concerned. It is probably more of an aesthetic problem, but I think if this is approved, it will devalue our property so greatly and we are all going to lose so much money. That was not our intent when we came out here, even if we bought this land.

I also called a real estate person and they also stated primarily about the same thing. It is not necessarily when you go to sell the home, it is how many buyers would want to actually buy across the street or next to a funeral home. So you automatically lose buyers by that particular situation. So then, the value of it automatically would go down. We asked them about putting a concrete wall across Webb Road. He was receptive to that, but then again, there is nothing in the plans that say he has to do this. There are not any assurances for property owners that anything would be done, to be

honest with you other than what state guidelines would be for a cemetery. It being, which the owner stated to you, it would be a very small cemetery. The problem with that is, to me, and I would have to see the figures on it, would be the amount of gravesites that you would be able to have in there. How long would they be able to sustain that as a cemetery? He may have good rights today, but who is going to own it tomorrow?

I think that in this particular situation, there is plenty of land as was noted. Housing within half a mile that if you moved on out past some of this particular housing district housing district here, there is plenty of land out there where there is 80, 100, 360 acres and they can have a cemetery in any size they would like."

**GAROFALO** "Sir, your time is up. Do you need more time? Okay. Are there any questions?"

**MICHAELIS** "Mr. Hardin, with all due respect, and this is basically to everybody who has spoken. We sit here and hear property values all of the time and it is an arbitrary thing because nobody has ever been able to bring out something to substantiate it, but have you looked in the Zoning Code to see what kind of uses can go there now without requiring and zoning?"

**HARDIN** "From my understanding, it is zoned as a 'single-family'?"

**MICHAELIS** "Well, the Limited Commercial area."

**HARDIN** "That is just only the one area was Limited Commercial. On the other 5 acres, it was my understanding that it was single-family."

**MICHAELIS** "No, that is not correct. That whole section is pretty much is Limited Commercial; that is the way I understood it."

**HARDIN** "I don't know. I was going off of what is on the notice."

**MICHAELIS** "Some of the uses that could go in there is like an asphalt plant, taverns, those kinds of things. Sometimes it is better to look at the lessor of the evils."

**HARDIN** "We did."

**MICHAELIS** "The known commodity versus the unknown commodity."

**HARDIN** "We did, and if you will notice that where it is red on the east side (indicating) this right here, this is a dwelling, there is a dwelling and this is my home here. This is where a potential buyer would be. So when you say that those are zoned commercial, that doesn't give anything to us homeowners that are living there. Just because you say it is Limited Commercial, that doesn't mean anything to us."

**MICHAELIS** "All I was trying to say is that sometimes you need to look at 'is this a better use than what somebody can come along and do without asking for a zoning change?"

**HARDIN** "To be honest with you, we have no opposition to the funeral home. What we have opposition to is the cemetery. And you are talking about, probably at the max, maybe a 5-acre cemetery because of the off sets that are going to have to occur from where he is. So you are talking about a very limited cemetery, and at the prices he is saying he is wanting to give, I am not sure that the figures would bear out that that thing would be able to be taken care of from there on."

**BARFIELD** "Sir, if you could be assured that there would be proper screening, would you still be as opposed to this?"

**HARDIN** "Of course, if it is going to be approved, that would most definitely be. In the light of it not being approved, it wouldn't be necessary, of course."

**BARFIELD** "Would screening make you feel more comfortable?"

**HARDIN** "No, sir. Simply because what you are looking at are the Equus Beds and the way they flow across there. They have rural water out there, and at this particular time, it costs me \$2,900 just to hook up to the meter to the rural water. Now, we being a new homebuyer, I was able to do that, but you take a guy that is already established there, that is quite an expense."

**GAROFALO** "Are there any more questions? Thank you. Is there anyone else to speak in opposition?"

**LEROY JAMES** "Good evening. I live at 3250 South Webb. I am not a very good speaker, so bear with me. (Indicating) I live right here, and that is only an acre. My biggest concern is about the well water. I don't know whether it has any effect or not, but I do have the option of having onto rural water, but I wouldn't unless I have to. Right now, I am satisfied with my water. That is one of my main concerns. Then, I agree with everything else that has been said. That is basically it."

**GAROFALO** "Are there any questions of Mr. James? Thank you. Is there anyone else to speak in opposition? Okay, then, the applicant has two minutes for rebuttal."



**WATSON** "This is the first, with the exception of last night of any opposition to this. We had an open house where several of the neighbors, granted not across the street, but they all indicated that they were very pleased that somebody would go in and again, as you mentioned, it would be the lesser of two evils. I will have close to \$1 million invested in this corner and the property now is zoned that somebody could come along and put bright pink storage units in. They could put many other things that would be detrimental, not only to the landowners around there, but also to myself. So we had come to the conclusion that this would be an ideal use.

Vandalism was mentioned. In the eight months that we were building, we never had one problem there. I know you had mentioned about the kids on the gravel. We have an asphalt parking lot, and yeah, kids do probably like to have that time to peel out on gravel, but we have a very well lit facility. If you go by there at night, it looks like a shuttle launch. It is just a beautiful facility. I think this would be a great opportunity for the area. It is going to be like a park. I don't know what else to say except when I worked at Broadway Mortuary, we developed Kensington Gardens, which is 70 acres, at Greenwich and 21<sup>st</sup>. Tallgrass East is going to abut up right next to it, and those are \$200,000 to \$400,000 homes.

Again, I want to be a good neighbor, but at the same time, I think it is a great opportunity. It is a great use for the land that is already there and I would certainly ask that you go with your recommendation and recommend it. Thank you."

**GAROFALO** "Are there any questions of the applicant?"

**JOHNSON** "I want to ask Marvin a question of the zoning. The majority of the lot that he owns is 'LC'. If he could not have a cemetery in that area and not even be in front of us on that portion."

**KROUT** "A cemetery is a permitted use in 'LC', so everything that you see in red color on the aerial, which is about 80% of the property, that is off of the funeral home site, which is already developed, can be a cemetery by right without this Conditional Use. So the only thing he is really asking for is the strip along the south and the west."

**GAROFALO** "Oh. Okay."

**JOHNSON** "Do you know how wide that strip is?"

**KROUT** "Scott, can you help? I am guessing about 150 feet."

**MAN IN THE AUDIENCE** "It is approximately 170 feet."

**KROUT** "Okay, and less than 50 feet on the west?"

**MAN IN THE AUDIENCE** "Yes."

**KNEBEL** "Of the 11 acres that is outlined in black there, approximately 8 of it is already zoned Limited Commercial."

**GAROFALO** "About 8 of the 11 acres. Okay, are there any other questions?"

**OSBORNE-HOWES** "I guess I have been listing some of the neighborhoods that abut cemeteries, and I have been thinking about some of the cemeteries around here. It seems to me that usually fairly expensive homes abut cemeteries. As a matter of fact, I know of some off of 119<sup>th</sup> Street north, just north of Resthaven that built recently that are very expensive homes that abut to the north part of Resthaven. So I am having difficulty seeing the question about values dropping. As a matter of fact, I would think a far better question to have asked the realtors when you called them would be would your property values drop if they were next to a tavern or something else that would be located in Limited Commercial.

I guess the only question I have of staff is that you have spoken against cemeteries before if they were developed in an area that you thought would be better served before commercial development, and yet you are approving this, so if you feel comfortable with this, I am ready to make a motion."

**KROUT** "The only time we opposed a cemetery was 100 acres at the intersection of K-96, Greenwich Road and 21<sup>st</sup> Street because it was designated on the plan for major commercial, and we thought that property with access that was that terrific is a key area in the community and the tax base should have been part of the concern. It was a logical place for commercial development. But I think it is fairly common, off an arterial intersection to see something like this. That is why we simply asked the appraiser if there were discounts; if there were claims that people have. That is a little bit different than asking a realtor how many sales they will get. The appraiser couldn't give us any information that would say that there would be devaluation.

The other thing I wanted to say in response to the question about groundwater was that Dale did talk to Jack Brown at the Health Department about that question after we received an E-mail. Dale, do you want to provide his response?"

**MILLER** "Yes. Jack indicated that of the contaminated sites in Kansas, none of them have anything to do with a cemetery."

**MOTION:** Having considered the factors as contained in Policy Statement No. 10; taking into consideration the staff findings (The zoning, uses and character of the neighborhood): The surrounding property is primarily developed with a mixture of suburban residential and agricultural uses on property zoned "SF-20" Single Family Residential. The northwest, northeast, and southeast corners of the 31<sup>st</sup> Street South and Webb Road intersection are undeveloped and are zoned "LC" Limited Commercial. To the west of the subject property is a church on property zoned "SF-20" Single Family Residential. The suitability of the subject property for the uses to which it has been restricted: The property is zoned "SF-20" Single Family Residential. With a Conditional Use, a cemetery is permitted in the "SF-20" district. Extent to which removal of the restrictions will detrimentally affect nearby property: The development standards of the Unified Zoning Code should limit any detrimental affects of the proposed use on nearby property. Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies: The Land Use Guide in the update to the Comprehensive Plan that was recently adopted by the Planning Commission indicates that the subject property is appropriate for "Low Density Residential" development. With a Conditional Use, cemeteries are permitted in residential districts. The Land Use Guide also indicates that the subject property is on the fringe of the 10-year urban service area. Impact of the proposed development on community facilities: The use of this property should have limited impact on community facilities.) I move that we recommend to the governing body that the request be approved, subject to the following:

1. The site shall be developed in general conformance with the approved site plan. All improvements shall be completed before the facility becomes operational.
2. Any violation of the conditions of approval shall render the Conditional Use null and void.

**OSBORNE-HOWES** moved, **MICHAELIS** seconded the motion.

**GAROFALO** "Is there any discussion?"

**LOPEZ** "I have a question. In the recommendations here, I don't see any reference to screening."

**KROUT** "We have never required the screening of a cemetery site. I guess we consider it to be open space and I think that as many people would probably like to see it unscreened and open and green as would like to see it screened. If you think that it is necessary, and again, most of the property is across the street from 'LC' zoned property, so it might make more sense along the south or west boundaries, but not generally along the street.

It is fairly common to see wrought iron fencing, but we have never made that a requirement. There are cemeteries with and cemeteries without that kind of fencing. But you can add any conditions that you think are reasonable and appropriate for this particular site."

**WARREN** "Mr. Chair, I think it is important to the people here in this room to know that we are not just being oblivious or insensitive to their concerns, because I think we are sensitive. We always are. I think it is important that we tell them that we do not have, on this board, unlimited powers to deny. In this case, this is a permitted use in this zone with the exception of that little bit and even there it is a Conditional Use. So it isn't that we haven't heard you, it isn't that we haven't been concerned about you, but we have no right to deny this application that I see, legally. I just want to make that clear, for the record."

**GAROFALO** "The question I have then, is is the Conditional Use just for that small area to the south and west?"

**KNEBEL** "Actually, the Conditional Use is only required for that area. The applicant did submit their application for the entire site, so the site plan and the approval of the site would be subject to, even the portions in the Limited Commercial, would need to be developed subject to the approved site plan."

**BARFIELD** "I would like to ask the maker of the motion if she would consider suggesting screening on the west side of there?"

**OSBORNE-HOWES** "Can I see the aerial?"

**WARREN** "I think we could be accused of being discriminatory if we approved this that way."

**OSBORNE-HOWES** "There is nothing there. No, I don't think so. Actually, what they are going to have is open space really. Should there be any screening required for this mausoleum?"

**KROUT** "No."

**WARREN** "Leave your motion like it is."

**OSBORNE-HOWES** "Really, what this does is protects the neighborhood more than if he had come back in and asked for a Limited Commercial for the entire acreage. He asked for a Conditional Use only for the cemetery. So, no, I am not going to change the motion."

**GAROFALO** "Okay, is there any other discussion?"

**VOTE ON THE MOTION:** The motion carried with 10 votes in favor. There was no opposition.

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7. **Case No. CON2000-00010** - Juanita L. Doyan (Owner/Applicant); Ferris Consulting c/o Greg Ferris (Agent) request Conditional Use for outdoor vehicle and equipment sales on property described as:

The South 11 feet of Lot 3, All of Lots 5 and 7 of TOSH'S SUBDIVISION to Wichita, Kansas, a replat of Lot 6, Zimmerly's Addition and the North 1/3 of the W/2 of Lot 7, Zimmerly's Addition to the City of Wichita, Sedgwick County, Kansas. Generally located south of Boston and east of Broadway (1506 S. Broadway).

**SCOTT KNEBEL**, Planning staff, pointed out land use and zoning; and showed slides of the general area. He reviewed the following staff report:

**BACKGROUND:** The applicant is requesting a Conditional Use to allow outdoor vehicle and equipment sales on a 0.39 acre platted tract located south of Boston and east of Broadway (1506 S. Broadway). The subject property is zoned "LC" Limited Commercial, and outdoor vehicle and equipment sales is permitted with a Conditional Use in the "LC" district. The applicant is proposing to convert the site of a vacant laundry mat into a used car lot.

The character of the neighborhood is that of mixed-use development consisting of single-family and multi-family residential development and various commercial uses, including two used car lots within one block of the site. The zoning of the property to the north is "GC" General Commercial. The zoning of the properties to the south and west is "LC" Limited Commercial. The zoning of the properties to the east is "MF-29" Multi-Family. The property across Boston to the north is developed with a vehicle repair business. The adjacent property to the south is developed with a single-family residence. The adjacent properties to the east are developed with single-family residences. The property across Broadway to the west is developed with a pawnshop.

The applicant has submitted a site plan showing the proposed use of the subject property. The site plan shows a 2,909 square foot sales/office building, approximately 6,200 square feet of display area, five employee/customer parking spaces, three light poles of undesignated height, and a six foot high wood screening fence along the south property line. The site plan does not provide sufficient area for the required parking spaces, which are two spaces for the first 10,000 square of display area and five spaces (one space per 500 square feet of building area) for the building area for a total of eight required parking spaces. The site plan also does not provide for a landscaped street yard or landscape buffering due to the entire site (outside the street right-of-way) being covered with buildings or paving.

To limit the impact of the proposal on surrounding properties and to bring the proposal into compliance with the Unified Zoning Code, planning staff recommends conditions of approval regarding parking, signage, landscaping, lighting, noise, and display area practices. Also, due to the age of the plats, which do not provide utility easements or street right-of-way in conformance with the Subdivision Regulations, planning staff also recommends that the Conditional Use be approved subject to the dedication of street right-of-way and utility easements.

**CASE HISTORY:** A portion of the subject property is platted as part of Tosh's Subdivision of Lot 6 in Zimmerly's Addition, which was recorded on February 14, 1887. Another portion of the subject property is platted as part of Zimmerly's Addition, which was recorded June 26, 1883.

**ADJACENT ZONING AND LAND USE:**

|               |                |
|---------------|----------------|
| NORTH: "GC"   | Vehicle Repair |
| SOUTH: "LC"   | Single Family  |
| EAST: "MF-29" | Single Family  |
| WEST: "LC"    | Pawnshop       |

**PUBLIC SERVICES:** This site has access to Broadway, a four-lane arterial with 1997 traffic volumes of approximately 10,000 vehicles per day. The 2030 Transportation Plan estimates the volumes on Broadway will remain approximately 10,000 vehicles per day. Municipal services are currently provided to this site.

**CONFORMANCE TO PLANS/POLICIES:** The Land Use Guide of the Comprehensive Plan identifies the general location as appropriate for "Commercial" development. The Commercial Locational Guidelines of the Comprehensive Plan recommend that commercial sites should be located adjacent to arterials and should have site design features which limit noise, lighting, and other activity from adversely impacting surrounding residential areas. The Commercial Locational Guidelines also recommend that auto-related commercial uses should be guided to cluster in areas such as CBD fringe,

segments of Kellogg, and other appropriate areas and streets where these uses may already exist or to locations where traffic patterns, surrounding land uses, and utilities can support these activities.

**RECOMMENDATION:** Based upon information available prior to the public hearing, planning staff recommends that the request be APPROVED, subject to the following conditions:

1. No outside storage of salvaged vehicles or parts shall be permitted.
2. All parking, storage, and display areas shall be paved with concrete, asphalt, or asphaltic concrete. Parking barriers shall be installed along all perimeter boundaries adjacent to streets, except at driveway entrances or where fences are erected, to ensure that parked vehicles do not encroach onto public right-of-way.
3. The vehicle sales lot shall not be conducted in conjunction with any use not directly related to such a business. Any automotive service or repair work conducted on the site shall be entirely within a building. No body or fender work shall be permitted.
4. No temporary display signs are permitted, including the use of commercial flags, banners, portable signs, pennants, streamers, pinwheels, string lights, search lights, bunting and balloons, except that fixed banners, affixed to light poles and not exceeding 50 square feet of material per light pole, will be permitted. However, in addition to the above, affixed banners or special promotional items shall be limited to twelve (12) events per year not to exceed ninety (90) days per year for all events.
5. Outdoor speakers and sound amplification systems shall not be permitted.
6. There shall be no elevated platforms for the display of vehicles.
7. The lighting standards of Section IV-B.4 of the Unified Zoning Code shall be complied with. No string-type lighting shall be permitted.
8. The applicant shall submit a landscape plan for approval by the Planning Director that provides for tree planting in the street right-of-way between the sidewalk and the curb.
9. The applicant shall submit a revised site plan that provides sufficient customer/employee parking spaces to comply with the Unified Zoning Code. The site shall be developed in general conformance with the approved site plan. All improvements shall be completed before the facility becomes operational.
10. The applicant shall dedicate by separate instrument the necessary easements in accordance with Section 7-205 of the Subdivision Regulations and street right-of-way in accordance with Section 7-201 of the Subdivision Regulations. The necessity of easements and street right-of-way shall be determined by City Engineering.
11. Any violation of the conditions of approval shall declare the Conditional Use null and void.

The staff's recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: The character of the neighborhood is that of mixed-use development consisting of single-family and multi-family residential development and various commercial uses. The zoning of the adjacent property to the north is "GC" General Commercial. The zoning of the adjacent properties to south and east is "LC" Limited Commercial. The zoning of the adjacent properties to the east is "MF-29" Multi-Family. The adjacent property to the north is developed with a vehicle repair business. The adjacent property to the south is developed with a single-family residence. The adjacent properties to the east are developed with single-family residences. The adjacent property to the west is developed with a pawnshop.
2. The suitability of the subject property for the uses to which it has been restricted: The property is zoned "LC" Limited Commercial. The property is developed with a vacant laundry mat and is apparently suitable for commercial uses to which it has been restricted.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: Detrimental affects should be minimized by the recommend conditions of approval which would limit signage, lighting, noise, and display area practices.
4. Conformance of the requested change to adopted or recognized Plans/Policies: The Land Use Guide of the Comprehensive Plan identifies the general location as appropriate for "Commercial" development. The Commercial Locational Guidelines of the Comprehensive Plan recommend that commercial sites should be located adjacent to arterials and should have site design features which limit noise, lighting, and other activity from adversely impacting surrounding residential areas. This site is located along Broadway, and the recommended conditions of approval have provisions which limit noise, lighting, and other adverse impacts. The Commercial Locational Guidelines also recommend that auto-related commercial uses should be guided to

cluster in areas such as CBD fringe, segments of Kellogg, and other appropriate areas and streets where these uses may already exist or to locations where traffic patterns, surrounding land uses, and utilities can support these activities. This site is located along Broadway in an area where auto-related commercial uses already exist.

5. Impact of the proposed development on community facilities: The use of this property should have limited impact on community facilities.

**KNEBEL** "The subject property, as indicated on the slide is zoned Limited Commercial, and outdoor vehicle and equipment sales is permitted with a Conditional Use in the 'LC' district. The applicant is proposing to convert the site of a vacant laundromat into a used car lot. The area is basically a mixed-use area; there is commercial development along Broadway, including a couple of used car lots a block to the south at Harry with both multi-family and single-family residential located off of Broadway, and in some cases along Broadway. There is single-family residence to the south and single-family residences immediately to the east.

The applicant has submitted a site plan which shows that the 2900 square foot building would be used as a sales/office building and there would be approximately 6200 square feet of display area. The site plan shows only 5 customer parking areas, however that is not sufficient regarding the Zoning Code, which would require, I believe 8 parking spaces based on the display area and the size of the building. The Commercial Locational Guidelines recommend that auto related commercial uses be guided to areas where the uses already exist, which in this case I have shown you that they do. Staff has recommended approval, subject to many of the same conditions that we have recommended for approval for used cars lots in this same vicinity and elsewhere."

**GAROFALO** "Are there any questions of Scott?"

**BARFIELD** "Will there be any repairs at this location?"

**KNEBEL** "Vehicle repair is a permitted use in the Limited Commercial district if it is indoors."

**BARFIELD** "Am I correct that the building does not detail any space for repairs?"

**KNEBEL** "It doesn't currently, right. There are no overhead doors to permit indoor repair, which would be limited to indoor repair, but I guess the building could someday be modified to permit that."

**GAROFALO** "Do they plan on using the current building that is there?"

**KNEBEL** "Yes. That is what is indicated on the site plan."

**GAROFALO** "Okay. Are there any other questions of Scott? Okay, we will hear from the applicant or agent."

**GREG FERRIS** "Members of the Planning Commission, my name is Greg Ferris with Ferris Consulting. I represent Juanita and Ernest Doyan, the owners of the property. At this late hour, I will not take any time to make a presentation unless you so require.

We concur with the staff recommendations and all of the conditions. Unless you have questions, I will leave it at that. I would say that if there is opposition, I would probably ask for an extension of my two minutes for rebuttal at the end, but I will not burden you with any presentation unless there are questions."

**GAROFALO** "Are there any questions of Mr. Ferris? Okay, thanks, Greg. Is there anyone else here to speak in favor of this application? Is there anyone here to speak in opposition? Seeing none, we will bring it back to the Commission."

**MOTION:** Having considered the factors as contained in Policy statement No. 10; taking into consideration the staff findings (The zoning, uses and character of the neighborhood: The character of the neighborhood is that of mixed-use development consisting of single-family and multi-family residential development and various commercial uses. The zoning of the adjacent property to the north is "GC" General Commercial. The zoning of the adjacent properties to south and east is "LC" Limited Commercial. The zoning of the adjacent properties to the east is "MF-29" Multi-Family. The adjacent property to the north is developed with a vehicle repair business. The adjacent property to the south is developed with a single-family residence. The adjacent properties to the east are developed with single-family residences. The adjacent property to the west is developed with a pawnshop. The suitability of the subject property for the uses to which it has been restricted: The property is zoned "LC" Limited Commercial. The property is developed with a vacant laundry mat and is apparently suitable for commercial uses to which it has been restricted. Extent to which removal of the restrictions will detrimentally affect nearby property: Detrimental affects should be minimized by the recommend conditions of approval which would limit signage, lighting, noise, and display area practices. Conformance of the requested change to adopted or recognized Plans/Policies: The Land Use Guide

of the Comprehensive Plan identifies the general location as appropriate for "Commercial" development. The Commercial Locational Guidelines of the Comprehensive Plan recommend that commercial sites should be located adjacent to arterials and should have site design features which limit noise, lighting, and other activity from adversely impacting surrounding residential areas. This site is located along Broadway, and the recommended conditions of approval have provisions which limit noise, lighting, and other adverse impacts. The Commercial Locational Guidelines also recommend that auto-related commercial uses should be guided to cluster in areas such as CBD fringe, segments of Kellogg, and other appropriate areas and streets where these uses may already exist or to locations where traffic patterns, surrounding land uses, and utilities can support these activities. This site is located along Broadway in an area where auto-related commercial uses already exist. Impact of the proposed development on community facilities: The use of this property should have limited impact on community facilities.) I move that we recommend to the governing body that the request be approved, subject to the following:

1. No outside storage of salvaged vehicles or parts shall be permitted.
2. All parking, storage, and display areas shall be paved with concrete, asphalt, or asphaltic concrete. Parking barriers shall be installed along all perimeter boundaries adjacent to streets, except at driveway entrances or where fences are erected, to ensure that parked vehicles do not encroach onto public right-of-way.
3. The vehicle sales lot shall not be conducted in conjunction with any use not directly related to such a business. Any automotive service or repair work conducted on the site shall be entirely within a building. No body or fender work shall be permitted.
4. No temporary display signs are permitted, including the use of commercial flags, banners, portable signs, pennants, streamers, pinwheels, string lights, search lights, bunting and balloons, except that fixed banners, affixed to light poles and not exceeding 50 square feet of material per light pole, will be permitted. However, in addition to the above, affixed banners or special promotional items shall be limited to twelve (12) events per year not to exceed ninety (90) days per year for all events.
5. Outdoor speakers and sound amplification systems shall not be permitted.
6. There shall be no elevated platforms for the display of vehicles.
7. The lighting standards of Section IV-B.4 of the Unified Zoning Code shall be complied with. No string-type lighting shall be permitted.
8. The applicant shall submit a landscape plan for approval by the Planning Director that provides for tree planting in the street right-of-way between the sidewalk and the curb.
9. The applicant shall submit a revised site plan that provides sufficient customer/employee parking spaces to comply with the Unified Zoning Code. The site shall be developed in general conformance with the approved site plan. All improvements shall be completed before the facility becomes operational.
10. The applicant shall dedicate by separate instrument the necessary easements in accordance with Section 7-205 of the Subdivision Regulations and street right-of-way in accordance with Section 7-201 of the Subdivision Regulations. The necessity of easements and street right-of-way shall be determined by City Engineering.
11. Any violation of the conditions of approval shall declare the Conditional Use null and void.

**LOPEZ** moved, **JOHNSON** seconded the motion, and it carried unanimously (10-0).

**PLATT** "Let the record show that I voted for a used car lot."

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8. **Case No. CON2000-00011** - West Wichita Development, Inc. (applicant - c/o Jay Russell); Russ Ewy, Baughman Company, P.A. (agent) request a Conditional Use to permit a neighborhood swimming pool on property described as:

That part of Reserve "D", Auburn Hills 8th Addition, Wichita, Sedgwick County, Kansas, described as follows: Beginning at the SW corner of Reserve "C" in said Auburn Hills 8th Addition; thence Southerly along the East line of 135th Street West, said East line being a curve to the right, having a central angle of 19 degrees 56'55"

and a radius of 544.67 feet, an arc distance of 189.64 feet, (having a chord length of 188.68 feet bearing S 02 degrees 41'53"W), to the NW corner of Auburn Hills 9th Addition, Wichita, Sedgwick County, Kansas; thence N 90 degrees 00'00" E along the North line of said Auburn Hills 9th Addition, 202.07 feet; thence N 00 degrees 05'53" E parallel with the West line of the NW/4 of Section 25, Township 27 South, Range 2 West of the 6th P.M., Sedgwick County, Kansas, 188.14 feet to a point on the South line of said Auburn Hills 8th Addition; thence N 89 degrees 54'07" W along the South line of said Auburn Hills 8th Addition, 193.51 feet to the point of beginning. Generally located south of Maple and east of 135<sup>th</sup> Street North.

**BARRY CARROLL**, Planning staff, pointed out land use and zoning; and showed slides of the general area. He reviewed the following staff report:

**BACKGROUND:** The applicant is requesting a Conditional Use to permit a neighborhood swimming pool on a platted (.83 acre) tract of land – "Reserve D" of the Auburn Hills 8<sup>th</sup> Addition. The application area is a rectangular shaped parcel and is located south of Maple and east of 135<sup>th</sup> Street West. This property is zoned "SF-6" Single-Family Residential and is currently undeveloped. The site plan shows a 16-foot by 32-foot swimming pool in the northwest corner of the property. Parking is shown south of the swimming pool with slots for six (6) vehicles. A 10-foot by 10-foot mechanical building is located east of the pool. Use of the facilities will be limited to residents of the Auburn Hills 8<sup>th</sup> and 9<sup>th</sup> Additions.

Currently there is complete "access control" along 135<sup>th</sup> Street West. The applicant wants access to the site from 135<sup>th</sup> Street West. The applicant will need to "vacate complete access control" in order to allow one opening.

The adjoining properties are zoned "SF-6", Single-Family Residential. The lots, to the north and south are currently being developed as "model homes" by various builders and are all single family dwellings. The area to the east is the golf course and is zoned "SF-6." To the west (across 135<sup>th</sup> Street West) is the site of the proposed Auburn Hills Golf Course Clubhouse and is also zoned "SF-6." The area shown as "Reserve C" on the site plan has been designated on the recorded plat to be "open space." There is a golf cart path currently on "Reserve C" and on the application area.

The hours of operation for and maintenance of the pool will be determined by the homeowners' association by restrictive covenant. The lighting for the pool will be shielded from the adjacent single family dwellings. There will be a wrought iron fence surrounding the pool.

Neighborhood swimming pools can be a "use-by-right" if the site is identified at the time of platting and a site plan is submitted for review and approval. After the plat is recorded, a Conditional Use is required.

**CASE HISTORY:** The current site is platted as "Reserve D" as part of the Auburn Hills 8<sup>th</sup> Addition. According to the recorded plat, that was approved on December 11, 1998, "Reserve D" is hereby reserved for all public uses related to a golf course and golf course facilities, drainage purposes, and utilities as confined to easements." On April 18, 2000, the City of Wichita, via a Statutory Warranty Deed, formally conveyed ownership of "Reserve D" to West Wichita Development, Inc.

**ADJACENT ZONING AND LAND USE:**

|        |                                  |                         |
|--------|----------------------------------|-------------------------|
| NORTH: | "SF-6" Single-Family Residential | Single-Family Residence |
| EAST:  | "SF-6" Single-Family Residential | Golf Course             |
| SOUTH: | "SF-6" Single-Family Residential | Single-Family Residence |
| WEST:  | "SF-6" Single-Family Residential | Auburn Hills Clubhouse  |

**PUBLIC SERVICES:** 135<sup>th</sup> Street West is a two-lane arterial street. Traffic volumes are not rated at this time. Water/sewer and other municipal services are provided to the site.

**CONFORMANCE TO PLANS/POLICIES:** The Land Use Guide of the Comprehensive Plan identifies this property as "low density residential." This residential category provides for the lowest density of urban residential land use and consists of traditional, single-family detached homes, zero lot line units and cluster subdivisions, as well as schools, churches and similar uses found in such areas.

**RECOMMENDATION:** Based on the information available prior to the public hearing, MAPD staff recommends the application be APPROVED, subject to the following conditions:

1. Within 60 days following approval of the Conditional Use permit and prior to the issuance of any building permits, the applicant shall submit to MAPD staff for review and approval, eight copies of the landscape plan for this property. The plan shall provide for landscaping in accordance with the City of Wichita's Landscape Ordinance.
2. The property will be developed in general conformance with the site plan approved by the MAPC
3. Development and use of this site for a neighborhood association swimming pool shall be in accordance with all applicable codes, including building and construction codes, health codes and operational standards.

4. The applicant will need to "vacate access control," by a separate instrument, in order to allow one opening along 135<sup>th</sup> Street West.
5. The applicant shall submit a restrictive covenant regarding the ownership and maintenance of "Reserve D" by the appropriate homeowners associations.
6. Violation of the foregoing conditions shall be cause for declaring this Conditional Use null and void.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: The subject property is situated in the middle of a developing residential area. Surrounding properties are all zoned "SF-6." Access to the site is from an arterial street. The lot is within walking distance from the surrounding single-family homes, and the off-street parking requirements minimize the number of parked cars on the local street. Small private areas like this are becoming more commonplace in new subdivisions.
2. Extent to which removal of the restrictions will detrimentally affect nearby property. Locating a neighborhood swimming pool along a local street with residential development would introduce more noise for the nearby residential properties. However, this use is limited by definition to subdivision residents and their guests, and the development of the property in accordance with requirements of the Conditional Use would minimize these problems.
3. Conformance of the requested change to the adopted or recognized Comprehensive Plan and Policies: Although the swimming pool is for use by the neighborhood, it would assist in meeting the Comprehensive Plan's goal of encouraging recreational uses within each square mile in developing areas.
4. Impact of the proposed development on community facilities: The proposed swimming pool would increase trips to the site, but the impact should be minimal. The neighborhood association will regulate the pool's hours, and access to the facility will be limited to neighborhood residents and their guests, thereby minimizing the need for additional police patrols. With approval of this project, the projected impact on community facilities is minimal.

**CARROLL** "This is a request for a Conditional Use for a neighborhood swimming pool on .83 acres of undeveloped property currently zoned 'SF-6' Single-Family residential. This is with the Auburn Hills Golf Course. Some houses are still being constructed there. The site plan shows a 16 x 32 foot swimming pool in the northwest corner of the property with 6 parking stalls. The use would be limited to the people living in the Auburn Hills 8<sup>th</sup> Addition.

Currently, along 135<sup>th</sup> Street West there is complete access control in order to gain access to the pool. The applicant will need to vacate complete access control in order to get one opening, which would be just opposite to the clubhouse. The Land Use Guide of the Comprehensive Plan identifies this property as low-density residential and staff is recommending approval, based on the six conditions that you have before. I would answer any questions that you might have."

**MCKAY** "I would declare a conflict of interest on this item, since I own the ground."

**GAROFALO** "Are there any questions of Barry? I have a couple of questions. It just occurred to me that in looking at this, are there houses now right adjacent to where the pool would be?"

**CARROLL** "Yes, they are currently being built along here (indicating) and along there. This will be the golf course and that will be the club house."

**MILLER** "The ones to the north are model homes, but I don't know about the one on the south. The ones that exist today on the north are model homes by the builders, they are unoccupied and then sold."

**GAROFALO** "They are unoccupied, but they probably would be sold."

**MILLER** "Eventually, yes."

**GAROFALO** "Are there any other questions of Barry? All right. Thanks, Barry. We will hear from the applicant or agent."

**RUSS EWY** "I am with the Baughman Company, agent for the applicant. As Dale mentioned, we have four model homes on these four lots, owned by four different builders. Spec homes are going up in the area on kind of a haphazard basis. All of those homes will eventually be sold to the property owners in the future with knowledge that this amenity will be in place.

I don't think I could get through one of these without asking for a change in one of the staff conditions. We understand the intent of Condition No. 5 about the covenant regarding maintenance and ownership. We would ask that that be rewritten to state 'the applicant shall submit a restrictive covenant regarding ownership and maintenance of Reserve 'D' by the appropriate homeowners' associations. This is not only going to be an amenity for Auburn Hills 8<sup>th</sup> Addition, but also the 9<sup>th</sup> Addition. (Indicating) there is some unplatted ground here that will be brought into the Auburn Hills community. We may be looking for that particular association to be involved with this particular swimming pool. So we are willing to give



staff the restrictive covenant, we just don't want to tie it simply to the Auburn Hills 8<sup>th</sup> Addition. Other than that, I will answer any questions that you may have."

**GAROFALO** "The question I have is why wouldn't they put the swimming pool across the way near the clubhouse or something? Or at least close by? Why are they putting it right next to houses?"

**EWY** "Whatever amenities the clubhouse will provide will be on a larger scale. I think what we are trying to do is go into these developments, and some of these Auburn Hills subdivisions have already had neighborhood recreational facilities, neighborhood swimming pools platted within their reserves. What we are trying to do now is identify two, three or four additional sites where we are going to plug in some additional neighborhood pools. This obviously being one of them.

**GAROFALO** "Well, that is fine. Good luck on selling those properties right next to them. Are there any more questions? Is there anyone else to speak in support of this application? Is there anyone to speak in opposition? Okay, seeing none, we will take it back."

**MOTION:** Having considered the factors as contained in Policy Statement No. 10; taking into consideration the staff findings (The zoning, uses and character of the neighborhood: The subject property is situated in the middle of a developing residential area. Surrounding properties are all zoned "SF-6." Access to the site is from an arterial street. The lot is within walking distance from the surrounding single-family homes, and the off-street parking requirements minimize the number of parked cars on the local street. Small private areas like this are becoming more commonplace in new subdivisions. Extent to which removal of the restrictions will detrimentally affect nearby property. Locating a neighborhood swimming pool along a local street with residential development would introduce more noise for the nearby residential properties. However, this use is limited by definition to subdivision residents and their guests, and the development of the property in accordance with requirements of the Conditional Use would minimize these problems. Conformance of the requested change to the adopted or recognized Comprehensive Plan and Policies: Although the swimming pool is for use by the neighborhood, it would assist in meeting the Comprehensive Plan's goal of encouraging recreational uses within each square mile in developing areas. Impact of the proposed development on community facilities: The proposed swimming pool would increase trips to the site, but the impact should be minimal. The neighborhood association will regulate the pool's hours, and access to the facility will be limited to neighborhood residents and their guests, thereby minimizing the need for additional police patrols. With approval of this project, the projected impact on community facilities is minimal.) I move that we recommend to the governing body that the request be approved, subject to the following:

1. Within 60 days following approval of the Conditional Use permit and prior to the issuance of any building permits, the applicant shall submit to MAPD staff for review and approval, eight copies of the landscape plan for this property. The plan shall provide for landscaping in accordance with the City of Wichita's Landscape Ordinance.
2. The property will be developed in general conformance with the site plan approved by the MAPC
3. Development and use of this site for a neighborhood association swimming pool shall be in accordance with all applicable codes, including building and construction codes, health codes and operational standards.
4. The applicant will need to "vacate access control," by a separate instrument, in order to allow one opening along 135<sup>th</sup> Street West.
5. The applicant shall submit a restrictive covenant regarding the ownership and maintenance of "Reserve D" by the appropriate homeowners associations.
6. Violation of the foregoing conditions shall be cause for declaring this Conditional Use null and void.

**OSBORNE-HOWES** moved, **MICHAELIS** seconded the motion.

**GARFALO** "Is there any discussion?"

**BARFIELD** "There are several other references in the staff report to this as 135<sup>th</sup> Street North."

**CARROLL** "That was a mistake it should be 135<sup>th</sup> Street West."

**BARFIELD** "Okay."

**VOTE ON THE MOTION:** The motion carried with 9 votes in favor. There was no opposition. McKay abstained. Hentzen, Carraher, Wheeler and Marnell were not present.

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9. **Case No. ZON2000-00015** - Allen S. Girrens (owner); Austin-Miller, P.A. c/o Kim Edgington (agent) request zone change from "SF-20" Single-Family residential to "LI" Limited Industrial, on property described as:

The East 600 feet of: Beginning 1376.85 feet South of the Northeast corner of the Northeast Quarter of Section 1, Township 28, Range 2 West; thence South 702.22 feet; thence West 1241.03 feet; thence North 702.22 feet; thence East 1241.03 feet to the beginning, except the East 40 feet for road.

AND The East 600 feet of:

Beginning 2079.07 feet South of the Northeast corner of the Northeast Quarter of Section 1, Township 28, Range 2 West; thence South to a point 128.77 feet South of the Northeast corner of the Southeast Quarter; thence West 1240.04 feet; thence North 639.68 feet to a point West of the beginning; thence East 1241.03 feet to the beginning, except the East 40 feet for road.

**DALE MILLER**, Planning staff, pointed out land use and zoning; and showed slides of the general area. He reviewed the following staff report:

**BACKGROUND:** The applicant is requesting a zone change from "SF-20" Single Family to "LI" Limited Industrial for an 18-acre tract located on the west side of 119<sup>th</sup> Street West approximately one-fourth mile south of Pawnee. Although the property is zoned for large-lot residential use, it is being used currently as a construction sales and service establishment for the applicant's landscape business. This business has evolved as the applicant has reoriented his activities from traditional agricultural use of the property to focusing on his landscape contractor's business.

Construction sales and service is first permitted in the "GC" General Commercial zoning district unless the business is primarily a retail business and not a wholesale or service business. In that situation, it is a permitted use in the "LC" Limited Commercial zone. The type of business in operation would not qualify it as being primarily a retail business. The applicant is requesting the "LI" zoning district.

The application area is located in an agricultural area that has "SF-20" Single-Family zoning surrounding it on all sides. The nearest development is Granview Subdivision under development one mile north, and DP-142 Pawnee Mesa Residential C.U.P. (Hunter's Ridge) that is located one-half mile to the northeast. Both of these areas are within the corporate limits for Wichita. The only non-residential use near the property is the future site for a church on the northeast corner of 119<sup>th</sup> and Pawnee, zoned "SF-20." The Calfskin Creek borders the property to the west. The area requested for "LI" zoning is outside the FEMA 100-year floodplain for the Calfskin. The applicant owns additional land to the west that lies within the floodplain.

**ADJACENT ZONING AND LAND USE:**

|        |                        |                             |
|--------|------------------------|-----------------------------|
| NORTH: | "SF-20" Single-Family  | Agriculture, farm           |
| EAST   | "SF-20" Single Family  | Agriculture                 |
| SOUTH: | "SF-20" Single Family; | Agriculture                 |
| WEST:  | "SF-20" Single Family  | Agriculture, Calfskin Creek |

**PUBLIC SERVICES:** Access to the property is via 119<sup>th</sup> Street West, a two-lane arterial paved to county standard. Traffic volumes in 1997 were low, rated as 2,360 ADTs for the segment of 119<sup>th</sup> south of Pawnee. Volumes are predicted to increase to approximately 9,000 by 2030. The 2030 Transportation Plan shows 119<sup>th</sup> being widened north of Pawnee to Maple from two lanes to four lanes; this improvement is not included in the C.I.P. for 2000-2009. South of Pawnee, it remains a two-lane facility.

City water and sewer services are not available west of 119<sup>th</sup> at the current time. The nearest water line is 16" line [that is 1/4 mile east of Pawnee and 119th W. The nearest sewer mains that could possibly be extended are a 12" main that is 1 1/2 miles east of Pawnee and 119th W, or a 12" main that is 1/2 mile north and 1/3 mile east of Pawnee and 119th W.](#)

**CONFORMANCE TO PLANS/POLICIES:** The "Wichita Land Use Guide" in the 1999 Update to the Wichita-Sedgwick County Comprehensive Plan identifies this area as appropriate for low-density residential use, and places it beyond the 10 Year Urban Service Area, but within the 30 Year Urban Service Area. The area to the north, east, and west of the application area is shown for low-density residential also. The area to the south is identified as remaining in rural use. No land is shown along 119<sup>th</sup> as industrial except over a mile to the north between Kellogg and the abandoned right-of-way of the Kansas Central Railroad, and over 1 1/2 mile to the south between MacArthur and K-42.

The "Industrial Locational Guidelines" contain three points. These are:

- Industrial areas should be located in close proximity to support services and be provided good access to major arterials, city truck routes, belt highways, utility trunk lines, rail spurs, airports and as extensions of existing industrial uses.

- Industrial traffic should not feed directly into local streets in residential areas.
- Industrial uses should be generally located away from existing or planned residential areas, and sited so as not to generate industrial traffic through less intensive land use areas.

While the site is along a future major arterial, it conflicts with the first guideline of being an extension of existing industrial areas. The requested rezoning fails to conform to the third guideline since it is located in an area being developed as a low-density residential area.

The first available zoning district that would allow construction sales and service is "GC." There are six locational guidelines for commercial use. These will be discussed to determine the conformance of the application area to potential "GC" use.

- Of the six locational guidelines for commercial use, the proposed request conforms to the required location along a major arterial street, and presumably ingress and egress could be structured during the platting process to avoid traffic congestion.
- It conflicts with the guideline that commercial uses should be located in compact clusters or nodes versus extended strip developments.
- It is inconsistent with the guideline that commercial uses should be located in planned centers or nodes, should be guided to other appropriate areas such as the CBD fringe, segments of Kellogg, or established areas of similar development, and areas where traffic patterns, surrounding land uses and utilities can support such development.
- It adheres to the guideline of not directing commercial use onto local residential streets.
- No site plan was provided to evaluate whether the site design guideline could be met for mitigating noise, lighting and other aspects of commercial activity that may adversely impact surrounding residential land uses. Currently, the property appears to be developed in a neat manner. Presumably, site design standards could be required to ensure compliance with this criterion.

**RECOMMENDATION:** The introduction of industrial zoning at a mid-point location along 119<sup>th</sup> between Pawnee and 31<sup>st</sup> Street South introduces industrial use adjacent to an arterial being developed for residential use and being shown on the Comprehensive Plan for low-density residential use. The lack of public water and sewer service to the site is another factor discouraging this application. There is no significant factor pointing to "LI" being an appropriate use except that the current use has evolved to need "LI" or "GC" zoning in order to expand its landscape construction business. The Comprehensive Plan has identified the Kellogg corridor as an appropriate location for this type of use.

Even when considering the more restrictive classification of "GC," there are more factors weighing against this rezoning than recommending in its favor, particularly because it is introducing commercial use into a mid-point location where previously the land has been used for agriculture. The transition to urban development has followed the pattern of low-density residential. In addition, construction sales and service is considered a use that does not blend well with residential use. Typical operations have a lot of heavy equipment (noise), rely on outdoor storage of equipment and supplies, and require a large amount of land, making adequate screening and buffering expensive.

Based on these factors and information available prior to the public hearing, Staff recommends the application by **DENIED**. This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: The land in the immediate vicinity of the property is used for agricultural purposes. The character of urban development on the eastern side of 119<sup>th</sup> to the north of the application area is low-density residential. The only non-residential use being developed nearby is a church, which is a permitted use in all residential zoning districts. The property to the west is located in the Calfskin Creek floodplain. The land to the west of the Calfskin along 135<sup>th</sup> Street West, the next major county line road, 135<sup>th</sup> Street West, is in agricultural use with a few large-lot residential uses.
2. The suitability of the subject property for the uses to which it has been restricted: The property could be used agriculturally or in low-density residential use. This would conform to the existing development pattern and the Comprehensive Plan.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: The change to "LI" Limited Industrial or "GC" General Commercial would introduce non-residential uses that are incompatible with low-density use. It would provide an opening to encourage other non-residential uses to gravitate to the vicinity.
4. The length of time the subject property has remained vacant as zoned: The property has been in agricultural use and is converting to a landscape construction business.
5. The relative gain to the public health, safety and welfare as compared to the loss in value or the hardship imposed upon the applicant: Approving "LI" or "GC" zoning benefits the applicant by not requiring him to relocate his growing business into an area already zoned or more appropriate for this type of use, at the expense of the general public.

6. Conformance of the requested change to the adopted or recognized Comprehensive Plan: The proposed request is not in conformance with the Wichita Land Use Guide of the Comprehensive Plan. The request fails to comply with all locational guidelines for industrial use except not directly using local residential streets for access. The request also fails to comply with the commercial locational guidelines of not locating within commercial clusters or nodes or gravitating to the established areas of similar use or where traffic patterns, surrounding land uses and utilities can support such development.
7. Impact of the proposed development on community facilities: Traffic impact should be minimal. Sewage impacts would be minimal if adhering to a criterion of domestic water level generation and proper drainage/floodplain management. However, greater consumption of water would require extension of sewer lines to serve the site.

**MILLER** "This is an 18-acre tract and the applicant currently operates a landscaping construction business. Apparently, this business has evolved from strictly kind of an ag use where the buildings, etc., were originally ag oriented, and then he has gotten into this landscaping/construction-type business, so it has kind of evolved that way, which is not an illegal use in the current zoning, so they are needing to ask for this change.

In the Code, construction sales and service, which is what this is categorized as because they have heavy equipment, a semi-tractor truck, a low-boy backhoe-type equipment on the site. That makes it a construction sales and service as is first permitted in the 'GC' General Commercial zoning district unless the business is primarily a retail business and not a wholesale or service business. If that were the case, then it would be permitted in the 'LC'. But since he is not primarily retail, he then needs either 'LI', or 'GC' zoning.

As I indicated, there is agricultural use around the application area. All of the property around is also zoned 'SF-20' single-family. The closest non-residential use is a future site for a church, which is to be located at the northeast corner of the intersection of 119<sup>th</sup> and Pawnee. I can't see it here, but there is some urban scale development about half a mile to the east here on Pawnee. That is the closest urban density development. City sewer and water is not available currently at this location. One Hundred Nineteenth Street is a two-lane arterial and is paved to County standards. The Comprehensive Plan identifies this area as appropriate for low-density residential use and it is beyond the 10-year urban service area, but is within the 30-year service area.

Since the request is for 'LI' Limited Industrial, we would point out that on Page 3 of the staff report that there are three criteria that we look at to determine what is an appropriate location. One of those has to do with close proximity to support services, access to major arterials, highways, utility trunk lines, or are they extensions of existing industrial uses? Other things that we look at are will the industrial traffic be fed directly onto local street or in residential areas and it is the opinion of the Plan that the industrial uses should generally be located away from existing or planned residential areas. While this site is along a future major arterial, it conflicts with the first guideline of being an extension of an existing industrial area, and the requested re-zoning fails to conform to the third guideline, since it is located in an area being developed as a low-density residential area. We think this is equally unfit for 'GC' based on the current locational guidelines.

Because of those reasons, staff is recommending that this is probably not a good place for the request and we are requesting denial, primarily on the basis that it is a mid-point location. We typically have not recommended approval of non-residential uses at the mid-point in the mile section; that it is adjacent to an arterial that essentially by the plan is being recommended as developed for low-density residential use. There is a lack of public water and sewer service to the site and we feel like to approve this would then reinforce the notion that other requests similar to this could then come in on either side of it mid-point in the mile instead of being at the intersection where it is recommended that the more heavier zoning be confined. I will answer any questions."

**GAROFALO** "I have a question. If this is denied, as recommended, what happens to the present operation?"

**MILLER** "He would have to go someplace else. He would have to stop operations on this site."

**BARFIELD** "I am a bit confused. On Page 3 of the staff report, it says here that 'the requested zoning fails to conform to the third guideline since it is located in an area being developed as a low-density residential area'. Then, over on Page 4 you say 'the land in the immediate vicinity of the property is used for agricultural purposes.'"

**MILLER** "Donna wrote the staff report, and what she was trying to say was that the immediate use, right now, is ag, but there are low density residential developments north and to the northeast of this. As I indicated, there is one within half a mile going east on Pawnee that as that area expands, it will become a low-density area, as indicated in the Comprehensive Plan, but today, if you go out there, it is an agricultural use."

**MICHAELIS** "You mentioned that there were no services there now presently. Is the capabilities for services there or is that out of elevation? Could it be serviced?"

**MILLER** "I am not sure I know the answer to that one."

**KROUT** "Yes. They can be serviced, it is just too expensive and too far away to bring the services to this small operation."

**WARREN** "What we don't have, you are saying, is water and sewer."

**KROUT** "Yes, but it is within half a mile to a mile and it is in an area where the sewer lines can be extended."

**WARREN** "He doesn't really need them for his operation, does he?"

**KROUT** "He may or may not at this particular operation."

**MCKAY** "If this was on the corner, half a mile north, it would conform then, because it is on the corner?"

**MILLER** "If it were on the corner, then not the 'LI', but then you could at least consider the 'GC'. That is more of a locational criteria, but we typically don't approve 'GC' at the intersection of section line roads. That would be closer, but we don't think that either one of them would really work at this point in time, given the way it is and what is projected for that area."

**MCKAY** "So the objection is the outside storage of equipment or what?"

**MILLER** "Well, I think that is part of it, but to grant 'LI' zoning in an area that is clearly indicated in the Comprehensive Plan as being appropriate for low-density residential, located away from the intersection of a section line road, which typically we wouldn't recommend 'LI' for there, I think that comment is more aimed at the commercial request, the 'LC' type thing. It is just an activity that is not appropriate, given what the future use is intended."

**KROUT** "A good analogy would be the County's maintenance yards, which they have put out there sometimes in advance of residential areas like at Webb Road near Pawnee and eventually what happens is that the County gets lots of complaints. They are not uses that are generally compatible with each other and eventually the County ends up saying that they are going to need to relocate this maintenance yard."

**WARREN** "Right. Or screen it."

**KROUT** "I think if they screened it, I think there would still be some objections to it. The point is, let's prevent that sort of situation because this is not County. This property owner wants us to grant the zoning and the zoning is there probably forever."

**WARNER** "It is zoned agricultural now?"

**MILLER** "It is zoned 'SF-20'."

**WARNER** "If he using it as agricultural, he could have a combine, a tractor and a disc and whatever else parked out in his yard?"

**MILLER** "That is correct."

**WARNER** "But he can't put a backhoe out there because he is digging holes instead of plowing. Am I understanding this correctly?"

**KROUT** "You can do some of the kinds of activities that he is interested in doing if it was a home occupation and if it had screening requirement, because the idea is that it is a farmer's supplemental income and it is going to be limited to scale and the same person is going to be living on the property. You don't have that situation today, so you are zoning the property for a variety of uses and it is not someone who is living there unless the zoning is granted to scale and the nature of the use contained over time."

**WARNER** "Did the applicant initiate this as far as changing the zoning, or did somebody go out there and catch him doing something wrong and told him to rezone this?"

**MILLER** "The applicant may be able to answer that, I don't know."

**GAROFALO** "Okay, let's hear from the applicant, then."

**KIM EDGINGTON** "I am with Austin Miller, representing the applicant. First off, I will address the question as far as to whether or not Mr. Girrens, the applicant was cited. He has come in voluntarily for this zoning application. I think he is aware of a similar situation elsewhere in the County where this has become a problem and which has prompted him to try to get ahead of having any citations issued. That would be my first point.

Secondly, I think that we need to look at the fact that the suggestions for low-density residential development are, at this point, entirely speculative and to keep in mind the fact that we have an existing business owner whose property has been in the family for well over 100 years. This entire section is owned and has been owned in the family. So I would like to keep that in mind that whether or not we can fairly require this man to move his business elsewhere, based on what may or may not occur in the future as far as residential development.

He is still using the property in an agricultural manner. You can see on the slides that he has some cattle out there. That fact will remain. It is just the situation has come to that he is using this construction landscape business to supplement that income, finding that that has been a little more lucrative than strictly the farming business. I know that Marvin mentioned the example of County maintenance yards, but there are also several examples in town of industrial uses that residential developments have occurred around and they have been very successful. These uses are perceived as incompatible, but they have actually worked very well. Willowbend being a prime example of that.

We have some significant setbacks on this property. The metal building that is closest to 119<sup>th</sup> Street is approximately 125 feet from the east property line. We will also be more than willing to look at creating some significant building setbacks and also, I think you could see by the slides that the applicant has done a lot of planting and is working on some decorative fencing along the front. We are more than willing to look at that as a condition with some landscape buffering.

And kind of along the lines of the speculation of low-density residential developing, at this point we have this case before us in the here and now, and the opportunity to allow this man to continue his business operations and also to be taxing this at a little higher level. I think that the future use of the surrounding property is going to be determined by the market, and when we find existing uses, they tend to be a little less offensive if they are in place before that residential occurs rather than going in after the fact.

As far as some specifics about Mr. Girrens operation, he is a one-man operation. He has two primary pieces of equipment; an excavator and a skid-loader. Those are both trailered, and as was mentioned before, there is a farmstead just to the north of him that has far more equipment stored on that site, it is just green rather than yellow. That is the main difference. He has been doing this work for about 12 years now and runs a very clean operation and would like to have the ability to continue that and at some point to expand and that is precipitating this zoning request. I would be happy to answer any questions."

**MCKAY** "Kim, how much ground does his family or does he own around this?"

**EDGINGTON** "The applicant is here, and I think he would probably answer that question a little better than I can. I know that it is almost the entire section of land."

**MCKAY** "Is he farming it?"

**EDGINGTON** "He himself?"

**MCKAY** "Yes."

**EDGINGTON** "No. Members of his family, different ones."

**WARREN** "Well, it is quite obvious to me that probably this applicant really doesn't care about industrial zoning, but what he is interested in is some vehicle by which he can go ahead and continue his operation. The Industrial zoning is only there because that is about all that is available. Is that correct?"

**EDGINGTON** "I think that staff has pointed out the fact that this use could be done with General Commercial zoning, but that also lets in a lot of other uses."

**WARREN** "Now, if we took into consideration what we probably wouldn't want there, then you could protect us from that with a Protective Overlay, couldn't you?"

**EDGINGTON** "Yes, we would be willing to do that."

**WARREN** "Would you be willing to issue a Protective Overlay and eliminate all of those potentials that we don't want and still allow him to do this."

**EDGINGTON** "Absolutely. And then we could incorporate some protective measures as far as landscape buffering and setbacks. And like I said, the applicant is here and probably can answer these questions better than."

**GAROFALO** "Do we have any questions of the applicant?"

**MCKAY** "I would like to know how much land they really do own around it."

**GAROFALO** "Okay. The applicant still has 4 minutes and 58 seconds and he or she can come up here and address some of these questions or make whatever comments."

**ALLEN GIRRENS** "I live at 2659 South 119<sup>th</sup> Street West."

**MCKAY** "It was mentioned that you own a quarter section. In relationship to that piece of property, do you own the ground on both sides of the roads all around it, or what?"

**GIRRENS** "Where the red line is, right there, I actually own 40 acres. My Mother owns 40 acres behind it; my uncle owns 80 on the north side of me, and 160 on the south side of me. My Aunts own the rest of the ground behind it. There is just about 80 acres shy of a section there."

**MCKAY** "But it is all behind you?"

**GIRRENS** "Uh huh, it is all west of 119<sup>th</sup> Street."

**OSBORNE-HOWES** "Is your residence on this map?"

**GIRRENS** "Yes."

**OSBORNE-HOWES** "Where is it?"

**GIRRENS** "If you can see here, it is kind of where you see it is lightened up. (Indicating) Right in through here."

**OSBORNE-HOWES** "And you live there?"

**GIRRENS** "Yes. The building that you saw originally, I have a house in the north end of that."

**OSBORNE-HOWES** "And you live there?"

**GIRRENS** "Uh huh."

**MICHAELIS** "Mr. Girrens, can you tell me, I think Kim alluded to the fact that you own a backhoe, basically and a skid-loader, and that is currently what you use. Is that what your continued use is, and you don't see this expanding any beyond that? You don't see 20 backhoes and skid-loaders?"

**GIRRENS** "No. I am a one-man operation. I don't, as far as the Workmen's Comp, and stuff like that, I just work myself. I keep myself busy."

**MICHAELIS** "Well, I would like to compliment you on the neatness of it. I did go out there and look at it."

**GIRRENS** "I appreciate that. I try to do the best I can between farming and the fence that I have started there."

**OSBORNE-HOWES** "So you form also and do this in addition?"

**GIRRENS** "Yes."

**GAROFALO** "Okay, are there any other questions? Okay. Thank you, sir. Is there anyone else to speak in favor of this application? Is there anyone here to speak in opposition?"

**MARK BIBERSTEIN** "I am an attorney at Foulston and Siefken here in Wichita. My professional address is 700 Bank of America Building, Wichita, Kansas and my personal address is 2626 North Parkwood. I am here today representing Lucille Jacobs. She is here also, in the back of the room. She owns the property to the east, across 119<sup>th</sup> Street. Technically, I think it is owned in a trust in her name for estate planning purposes. She has owned this property since 1956, when she inherited from a family member.

We appear today in opposition to this requested change. We believe that the staff has investigated and considered this matter appropriately and that its conclusion is the correct one. There are a couple of points from the staff's recommendation that I would like to highlight. I will be very quick since it was already addressed briefly. That relates to Page 3 of the staff recommendations, which talks about where industrial locations should be in the industrial location guidelines. First, that it should be extensions of existing industrial uses. The third bullet point being that industrial uses should be generally located away from existing or planned residential areas.

I think what this incorporates is the common sense approach that you should have industrial areas next to industrial areas and you should have residential planned areas next to residential planned areas. When you mix the two, you are liable to have some problems. There was a comment that we should focus on the here and now, but you don't have to look very far in the case books, particularly if you are a lawyer, to find that there are problems that come up when you mix industrial use and residential uses. The two are oil and water. The recognition that you shouldn't mix the two is incorporated into the Comprehensive Plan, which as was alluded to, has this being low-density residential out into the future.

I respectfully disagree with the comment of focusing on the here and now. It is not a stretch at all to see the city and the residential area moving out. Plus if you want to always focus on the here and now, then why do you even bother with the Comprehensive Plans? If you start focusing on the here and now, pretty soon your plan is non-existent. We further agree with staff that granting this request would provide an opening to encourage other non-residential uses to gravitate to this vicinity, which is something we think should be avoided.

The second point is that this is not a zoning request necessitated by conflicting uses encroaching on the landowner's property. The area is zoned 'SF-20' and it is envisioned in the Comprehensive Plan to be low-density residential.

Instead, this is property that is currently zoned that way, and it is at the request of the landowner to change it. It is not being encroached upon. This ties in to a point made by the staff on Page 4, which is 'there is no significant factor pointing to Limited Industrial being an appropriate use except that the current use has evolved to need this status'. There was a question about what would happen if we don't approve this. I would caution that if you judge whether you should grant a zoning change based on what the applicant has done with his property, you are running the risk of people doing anything and then coming to you and asking for a zoning change.

When you apply the factors that the staff did, we think it requires that this planned use be maintained and that we not start down the slippery slope of creating mixed uses in this area by moving it to Industrial. And lastly, I will profess to not being a zoning lawyer. There were some comments about Protective Overlays. What we have before you today and what was presented to us is a request that this be Limited Industrial. That is Industrial next to low density residential. We would ask that if you are going to decide on a Protective Overlay that it be sent back to the staff and that the adjacent landowners be allowed to review those and have comments on that. But again, we would ask that it be denied in total, not granted in part with a Protective Overlay."

**BARFIELD** "Sir, do you consider a landscape construction business to be an industrial type business?"

**BIBERSTEIN** "I think that staff said that there would be two things required, a General Commercial or Limited Industrial. I would be lying if I told you that I am an expert on the different zoning, and I will tell you that.

But the request before you is not to let him run a landscaping business at a limited size. The request is to make this Limited Industrial. If you do that, you are making it industrial. You are not saying that you are going to let the applicant have a one-man operation. If you allow this Industrial use in, and then just as staff commented, you are then inviting encroachment, and pretty soon this plan that is in your Comprehensive Plan for low-density residential is eroded and you have mixed uses and you have problems."

**GAROFALO** "Are there any other questions? Thank you, sir. Is there anyone else here to speak in opposition?"

**LOUIS SITTLER** "I am speaking on behalf of my wife, Lorraine Sittler. My address is 24912 West 6<sup>th</sup> Street South, Garden Plain, Kansas. My wife's address is the same.

My wife owns an 80-acre tract on the east side of 119<sup>th</sup> Street West that corners with this tract that the zoning is requested on. It is an 80-acre tract. We feel that a change from 'SF' single-family to a lesser restrictive use would have an adverse affect on the value of this property in the future. If a variation or exception is granted, it would set a precedent for the entire area. It could very well open the door for other applicants. For this reason, we oppose any change from 'SF' single-family residential zoning to the other zoning. Thank you."

**GAROFALO** "Are there any questions of the speaker? Sir, could you go up to the aerial and show us where your property is?"

**SITTLER** "It is right here."

**GAROFALO** "Okay, thank you. Is there anyone else to speak in opposition? Okay, then the applicant has two minutes for rebuttal."

**EDGINGTON** "I would just like to address the fact that I think with the use of a Protective Overlay and putting some conditions on this property, will limit the affects of opening this up to a whole multitude of possibilities. We have, again, gotten into the speculation of how this surrounding property is going to develop with residential. There are a number of factors that are limiting that. The first being that currently there is no water and sewer available. There is, to the west of this property, a considerable amount of land in the 100-year flood plain, and the fact that it is just straddling the 30-year service area for the City of Wichita. It is, I think, up to a little bit of interpretation, whether or not the entire property is within or without that boundary.

But again, I think that if we look closely at some conditions and some limitations on this property, that we could eliminate a lot of the uses that would be seen as non-compatible or offensive to neighboring property owners."

**OSBORNE-HOWES** "Is it true that your client lives on that property and also farms it?"

**EDGINGTON** "Yes, it is."

**MICHAELIS** "Kim, I just want to make sure that I understand this correctly. I know the request is for Limited Industrial, but if I misunderstood, you can correct me. Personally, I would always go to a lesser zoning, if we can, so you are not opposed to dropping down to 'GC' and doing an overlay?"

**EDGINGTON** "No, we are not. And another reason that that would probably be to our advantage is that then his residence is not a non-conforming use within an Industrial zoning district. I think the applicant does have the intent, at some point, to build a home on this property but he does have the ability to go west of the area that is requested for rezoning and build in the 'SF-20' portion of his property. The applicant would be more than willing to look at a lesser zoning category as long as his business would still be allowed and especially just for future expansion purposes."



**MICHAELIS** "One more question. In regards to that, would you, and I guess in fairness to the opposition, to give them a chance to see what a 'GC' is and what a Protective Overlay is. Is that something that you would be willing to entertain, maybe, as in deferring it, or do you want to proceed on as we are?"

**EDGINGTON** "I think we would be willing to look at a deferral. I think that would probably be in best interest of all parties involved and we could sit back down with staff and try to iron out some of the issues."

**WARREN** "I think I am going to pick up on where Jerry was, too. Because you don't have a Protective Overlay here that we can look at, I think a deferral would be the most advantageous to all parties. And re-look at it."

**MICHAELIS** "Well, and that time it has time for everybody to see it."

**EDGINGTON** "Right, and we would be glad to prepare a site plan and lay out some of the things that we have mentioned; the buffering, the setbacks and other things."

**BARFIELD** "Well, once again, I am a bit confused. Staff says that the applicant owns additional land to the west. The applicant says he does not and then the agent for the applicant says that he does have the capability of building a home to the west."

**EDGINGTON** "The area of land that is requested for zoning is not the entire ownership of the applicant."

**MCKAY** "I asked him how much land he owned and he said he only owned 40 acres, but his family owns all the rest of the ground around it."

**MICHAELIS** "It is 18 of the 40 acres that he owns."

**EDGINGTON** "He does own an additional 22 acres to the west of this property, but he does not own the property beyond that."

**KROUT** "We understood, when Donna was processing this case because we first asked about rural home occupations, that this owner does not live on the property. Did I just hear you say that he does live on the property, but he intends to build off of the property?"

**EDGINGTON** "At some point, he is hoping to. Since he is living in one of the buildings that you saw in the slides right now. He has a home built into that, but his intent is, at some point, to build a standard, single-family home on this property. And since most of the property that he owns, the additional 22 acres to the west of here, most of that is within the flood plain, so he is a little bit limited as to where that house is going to go."

**KROUT** "I just want to explain to the Planning Commission that if you instruct us to work some kind of Protective Overlay out, we will, but we are not going to recommend approval of any Industrial or Commercial zoning. We don't think that is appropriate. What you can't do through a Protective Overlay is to put a time limit on it. There is no question in my mind that this is an area that is going to be ripe in the future for residential expansion and I just think that we are asking for trouble to start doing spot zoning like this. It is refreshing to hear people off the bench talk about the need for planning, and I understand that."

What we thought could happen is, we have Conditional Uses for rural home occupations, and if he came in, even on the 40 acres, with a site plan, it would require a Conditional Use because he would be exceeding the amount that he could have by right in rural home occupation in terms of the area that is outside and inside. But he could come in with a Conditional Use, deal with the site plan and other conditions that way and it would be tied to the specific use and tied to an owner living on the property, which could have been the 40 acres, and then you could put a time limit on it. And I think you should review this in five years and ask what is happening. Are we extending water and sewer and is this a time to face this development out. It is not a big investment, the investment is already there. I think it is very appropriate to put a time limit on it and the only way you could do that is by rural home occupation."

**OSBORNE HOWES** "I agree. I think that is really what we should recommend. If we are talking about a deferral so that they can come back, that is what I would like to see."

**WARREN** "Well, you are saying that he can qualify, probably, as a home occupation."

**KROUT** "If you approve a Conditional Use. There may still be opposition to that, but it seems to me that that is a much better option than the zoning we are talking about. And if the re-advertising created a boundary that included all of this acreage, then the fact that he moves his house and lives on a different part of the 40 acres at some point in time, would mean that he could continue to operate it as a home occupation. As long as he lives somewhere on whatever area we identify."

**MCKAY** "I would like to make a motion. Marvin, would two weeks be enough to defer this to let them sit down with staff to decide what Marvin was talking about, what particular use?"

**MILLER** "What if we have to re-advertise?"

**KROUT** "Yeah. Well, if they decide that they are willing to re-advertise, then we just won't put it on the agenda for two weeks from now and we will re-advertise. I think you should defer it for a time certain so that people in the audience know that unless they get a notice from us, you are going to make a decision two weeks from now."

**MOTION:** That the item be deferred for one month.

**MCKAY** moved.

**PLATT** "The first problem is that we are skipping a week in June, so four weeks or a month doesn't work. It would be three weeks or five weeks instead of four."

**KROUT** "The next meeting, June 15 would be three weeks, and I think that is probably enough time."

**AMENDED MOTION:** That the item be deferred until the June 15, 2000 meeting.

**MCKAY** moved.

**PLATT** "I just want to comment, for the record that I am certainly not interested in approving any kind of commercial zoning in that spot."

**WARREN** "I would like to go on record that commercial zoning isn't commercial zoning if you have a Protective Overlay. The two don't even simulate. Industrial zoning doesn't simulate Industrial zoning once you put the Protective Overlay. That is taking all of the teeth out of that zoning. I like the idea of a home occupation. I think that is the simplest and easiest, but I surely don't want to discount this application coming back in here with the use of a Protective Overlay. That does take all of the teeth out of those things we don't like."

**MICHAELIS** "I would like to ask John if maybe, and Kim, whether five weeks is too long. I think we have most of the opposition right here right now."

**GAROFALO** "We are talking about three weeks."

**KROUT** "It is only three weeks."

**MCKAY** "We are talking about the date certain being June 15 because we are missing next week."

**MICHAELIS** "So that is when it would come back here, June 15?"

**MCKAY** "Yeah."

**EDGINGTON** "And that is fine with us."

**JOHNSON** seconded the motion.

**GAROFALO** "Okay, is there any more discussion?"

**VOTE ON THE MOTION:** The motion carried with 10 votes in favor. There was no opposition.

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**10a. Case No. CON2000-00014** - OLC Properties (Owner, Rusty Eck); Austin Miller, Kim Edgington (agent) request Conditional Use to permit small animal clinic; and

**10b. Case No. ZON2000-00016** - OLC Properties (Owner, Rusty Eck); Austin Miller, Kim Edgington (agent) request zone change from "B" Multi-Family Residential to "GO" General Office on property described as:

Lot 1, except the East 30 feet, located in Normandy Village, Wichita, Sedgwick County, Kansas. Generally located south of Central, east of Stratford Drive (7015 East Central).

**DALE MILLER**, Planning staff, pointed out land use and zoning; and showed slides of the general area. He reviewed the following staff report:

**BACKGROUND:** The applicant is seeking a zone change from the "B", Multiple- family Residential district to the "GO", General Office district, and a Conditional Use Permit for "animal care, limited" (small animal clinic) on property located south of Central, east of Stratford Drive (extended) (7015 E. Central). The property is currently developed with an office building containing space for four tenants, two of which are currently occupied. The applicant indicates all services and kennel spaces would be located indoors.

Surrounding land uses are: single family residential ("SF-6", Single family Residential) north of Central; multi-family residential ("B", Multi-family Residential) on the east and south; and a synagogue ("SF-6", Single family Residential) on

the west. Access to the site is via two access points located on Central. Screening fencing currently exists along the south, east and west side of the property.

The "Unified Zoning Code" allows "animal care, limited" in the "GO" district if "no noise or odor is discernable at the property line, all animals shall be harbored indoors and treatment of animals shall be limited to dogs, cats and other small animals."

**CASE HISTORY:** Z-2643, a request for "OC", Office Commercial zoning was approved by MAPC, but withdrawn by the applicant prior to governing body hearing in 1984. (Minutes indicate the case was withdrawn due to a 60% protest.) Z-2782, a request for "GO", General Office was denied in 1986. Opposition comments centered on "stripping out" Central with non-residential uses, decrease in property value caused by introduction of non-residential uses in an area which is predominantly residential and objections to office uses that near to residences. The Normandy Village Addition was recorded in 1965.

**ADJACENT ZONING AND LAND USE:**

NORTH: "SF-6", Single-family Residential; single-family residential  
SOUTH: "B", Multi family Residential; apartment  
EAST: "B", Multi family Residential; apartment  
WEST: "SF-6", Single-family Residential; synagogue

**PUBLIC SERVICES:** Public sewer and water services are available to the site. Central is currently a four-lane arterial with an average daily traffic volume between 21,000 and 22,000 vehicles.

**CONFORMANCE TO PLANS/POLICIES:** The Wichita Land Use Guide depicts this site as appropriate for "high density residential" which permits densities in excess of 10 dwelling units per acre.

**RECOMMENDATION:** Based upon information available prior to the public hearings, planning staff recommends that the request be APPROVED, subject to the following conditions:

- A. The site shall be developed and utilized in general conformance with the site plan submitted with this request.
- B. Any violation of the conditions of approval shall render the conditional use permit null and void.
- C. That Protective Overlay No. 73 be established which restricts the uses permitted on the site to uses permitted in the "B", Multiple-Family Residential zoning district, "animal care, limited" and "general office" uses. Permitted office uses are the uses listed under "office, general" in the Unified Zoning Code, not the uses permitted in the "GO", General Office zoning district.

The recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: Surrounding land uses are: single family residential ("SF-6", Single family Residential) north of Central; multi-family residential ("B", Multi-family Residential) on the east and south; and a synagogue ("SF-6", Single family Residential) on the west. Central is a significant east-west arterial. At this mid-mile segment of Central, all uses except this office building and the synagogue are residential uses.
2. The suitability of the subject property for the uses to which it has been restricted. The site is zoned "B", Multi-family Residential. This district permits a complete range of residential uses, medical offices and a few other public and civic uses such as church, day care, group home or convalescent care. The subject tract has been developed with a four-suite office type building which limits the range of uses available to the applicant under this zoning. The applicant could wait for another medical service use to rent the space.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: Approval of the "GO", General Office district request would potentially allow uses not permitted in the "B" district. Examples of such uses are general office, group residences, funeral home or hotel. Since all the vet clinic's services and facilities are required to be inside, nearby properties would notice little difference between a medical office and the vet clinic.
4. Conformance of the requested change to the adopted or recognized Comprehensive Plan: The Wichita Land Use Guide depicts this site as appropriate for "high density residential" which permits densities in excess of 10 dwelling units per acre. Office uses are also considered to be appropriate buffer uses.
5. Impact of the proposed development on community facilities: No negative impacts have been identified.

**MILLER** "This property is currently developed with an office building. I think it contains space for four tenants or maybe five. The applicant has indicated that if this is approved, all of his kennel activities, per the Code, would be contained within the building. As you know, the 'B' multi-family district permits medical offices to be in the 'B' district, but that is the only office that is allowed; just a normal office for other types of office uses requires the next step up. Surrounding uses, as you can probably tell by the layout, are residential uses, except for this Parcel here (indicating), which is a synagogue.

The access road to their residences runs along the east side of the area that is under consideration. Public sewer and water services are available to this site. The Wichita Land Use Guide depicts this site as appropriate for high-density residential uses. Staff is recommending approval, subject to conditions.

In a nutshell, it was staff's opinion that, at least based on previous experience, we couldn't see that there was a whole lot of difference for that clinic that is inside an existing office building where they are required to have all of their facilities inside; they can't have any outside runs, that there wasn't much difference between this particular type of an office and those that are permitted in the 'GO' district today. We did receive five faxes from four people expressing concern and dismay that staff was supporting this request, and I believe they are here to speak in opposition. Are there any questions?"

**GAROFALO** "Are there questions of staff? If not, we will hear from the applicant or agent."

**KIM EDGINGTON** "I am with Austin Miller, representing the applicant. In general, we are in agreement with staff comments. We have a proposed tenant for this building with a veterinarian clinic. This building has been here for almost 20 years; the owner has had several troubles along the way maintaining a tenancy, due to the fact that the uses are limited to the 'B' zoning code. The General Office zoning, we feel is better suited to the existing use on this site in allowing a little wider array of office uses, which are appropriate as a buffer adjacent to this multi-family zoning. The vet office will be fully enclosed under the conditions of the Conditional Use. Those must be maintained. No noise or odors at the property line, otherwise it is null and void, and therefore the use is illegal.

We don't feel that the intensity is going to be increased at all on this property as far as traffic and noise, but in order for this to remain a viable center, which as you can see by the photos, it is very well maintained and landscaped; there is a significant screening wall that is attractive and well-maintained, but we need to maximize the potential for the property owner to lease this space and maintain tenants here. I would be glad to answer any questions."

**BARFIELD** "What is the construction of the screening fence?"

**EDGINGTON** "It is a wood fence. It is a decorative wood fence, not just a dog-eared cedar fence, and there is some latticework along it. It has been up a number of years, but it has been maintained. I think there have been repairs made on a consistent basis. It is very nice."

**BARFIELD** "Is that on three sides?"

**EDGINGTON** "Yes, on all three sides."

**GAROFALO** "Are there any other questions of Kim? Okay, is there anyone else here to speak in favor of this application? Is there anyone here to speak in opposition? There are four of you? Okay, come up now. State your name and address."

**WILLIAM H. BROWNING** "I live at 7077 East Central. Our objections are not the seriousness of a cemetery, but the idea of a veterinary establishment next to us, we feel is pretty out of the question, as we look at it.

Actually, I would like to say that this is the third time that we have appeared before this group; we've been here twice before about this very same thing of zone changing this. We have had the feeling that each time we have come away a little worse for it.

We do feel that the zoning changes always result in our property situation being a little darker. The man spoke about the thing that happened or was present 30 some odd years ago that led to the problem that we are having today. It was a matter of one person trying to hold up some development, and wasn't included, and it has left a little place that a developer can exploit, and has exploited through the years. It has not been to our benefit, but the other way.

Hopefully, you are understanding, as a body, to try to let us come away from this today with a settlement of the thing so that we wouldn't have to be back here again every little bit. We think that we need some fairness."

**GAROFALO** "Are there any questions of Mr. Browning? Okay, thank you, sir. Next speaker."

**KATHY PAULY** "I work for Weigand-Omega Management. We are the property management firm for the Chaumont, which is the multi-family housing directly behind the building in question where the condominium association is.

A couple of areas that are of concern to us and the homeowners. One, of course, is the change in the zoning, going to 'GO' which allows other things besides the veterinarian clinic, the way I am reading this. So who knows what could be there if we do a zoning change?

Rusty Eck himself told me yesterday that he does not have that building rented to an animal clinic, he has it rented to a dentist and a doctor, but I am understanding today that it is still rented to the clinic, so I guess we need some clarification there.

The concern to the resident owners, which as you can see, our fences abut up to each other. There is like 6 feet difference from the building to the Chaumont fence. Who monitors this situation at night? Kenneled dogs tend to be very

noisy. This was requested back in 1986 and it was denied to go 'GO' at that point. I don't see what the difference in the situations are.

The question of the fence and the screening has come up. I hadn't even thought about that; however, we have been maintaining that fence. A section of the fence around this office building has been down for months. I finally had my maintenance man fix that fence because I could not get any satisfaction in getting repairs made. There is about 2 feet in between our fence and their fence. That section is never maintained. There are weeds in there, most summers, 4 to 5 feet tall, so I question the maintenance of the fence. It is an old fence and it is not maintained properly. They said they had noticed very little difference in the noise level, but that remains to be seen.

If this is approved, who determines whether they are in violation? My experience with property management, it is not very easy to evict an existing tenant. It doesn't happen overnight. So how long would the Homeowner's Association have to put up with the smell and the noise level. Those are the concerns that we are basically expressing here today and we would appreciate your consideration."

**GAROFALO** "Thank you. Are there any questions?"

**BARFIELD** "Ma'am, are you identifying Rusty Eck as the owner of the property?"

**PAULY** "I talked to Rusty Eck and he told me he was the owner of the property. That is what it says here on the staff report that the owner is Rusty Eck."

**BARFIELD** "When you had problems with the fence, did you approach Rusty Eck?"

**PAULY** "I did not. I went to the tenant. I was told that that was who was responsible for it, but we could not get any satisfaction for months."

**GAROFALO** "Are there any other questions? Thank you, Ma'am. Next speaker."

**NAOMI LYRA** "I live at 7077 East Central at the Chaumont. We think that this proposal to change the zoning is unnecessary because you already have offices there, why change it? They have been there for a long time. It seems that this new zoning would only favor lowering the standards of this location, which is bad for us because it will also affect our property and our property values. It will interfere with the peace and quiet of our neighborhood. It will be bad for all of us. Now you say that this man has had difficulty renting his property. Offices and moving east and north, maybe it is about time for him to sell that property to do something else, but to put in there with animals that will disturb our peace seems to me a wrong move for our neighborhood.

We are surrounded by multi-residential, yes, but we are very quiet, we are very far back from the street. We are accustomed to peace and quiet and we want to continue to have it. The animals, I am sure, might be sick, but that is lowering the standard of that area. We are surrounded by single-family homes and we want to keep it that way. I am afraid of this change. We are all afraid of it. We had some people here to stand up for us, but I think they got tired of waiting and left. But there are two more here, so I hope that we will get a favorable reply from you. Thank you."

**PEGGY BROWNING** "I also live at the Chaumont, where we have lived for 20 years. It is a nice place. It seems to me that if they say they are having trouble renting that facility, they could just lower their prices a little bit, maybe.

Another thing is that if an animal clinic gets in there, it is going to be awfully hard on the little dogs and cats unless they have a run. So the next thing that is going to happen is that they are going to come back and ask you all for a variance to allow that. That is all I have to add."

**GAROFALO** "Are there any questions of the speaker? Thank you, ma'am. Is there anyone else? I think that is it. The agent has two minutes for rebuttal."

**EDGINGTON** "Just a couple of points I want to make really quickly. There is no avenue for us to pursue as far as allowing any kind of outdoor storage of these animals, so that is not available to us. I think that we would be happy to look at the maintenance in good order of that fence as a condition of the Conditional use. The fact of no outdoor uses on those animals is going to be a code enforcement issue, which you are aware of. We just feel that the use at this site is appropriate for additional office-type uses and that the veterinary clinic fits in well along that line."

**GAROFALO** "Are there any questions of Kim? I guess not, thank you. We will bring it back to the Commission."

**MOTION:** Having considered the factors as contained in Policy Statement No. 10; taking into consideration the staff findings (The zoning, uses and character of the neighborhood: Surrounding land uses are: single family residential ("SF-6", Single family Residential) north of Central; multi-family residential ("B", Multi-family Residential) on the east and south; and a synagogue ("SF-6", Single family Residential) on the west. Central is a significant east-west arterial. At this mid-mile segment of Central, all uses except this office building and the synagogue are residential uses. The suitability of the subject property for the uses to which it has been restricted. The site is zoned "B", Multi-family Residential. This district

permits a complete range of residential uses, medical offices and a few other public and civic uses such as church, day care, group home or convalescent care. The subject tract has been developed with a four-suite office type building which limits the range of uses available to the applicant under this zoning. The applicant could wait for another medical service use to rent the space. Extent to which removal of the restrictions will detrimentally affect nearby property: Approval of the "GO", General Office district request would potentially allow uses not permitted in the "B" district. Examples of such uses are general office, group residences, funeral home or hotel. Since all the vet clinic's services and facilities are required to be inside, nearby properties would notice little difference between a medical office and the vet clinic. Conformance of the requested change to the adopted or recognized Comprehensive Plan: The Wichita Land Use Guide depicts this site as appropriate for "high density residential" which permits densities in excess of 10 dwelling units per acre. Office uses are also considered to be appropriate buffer uses. Impact of the proposed development on community facilities: No negative impacts have been identified.) I move that we recommend to the governing body that the request be approved, subject to staff comments.

**BARFIELD** moved, **MICHAELIS** seconded the motion.

**OSBORNE-HOWES** "I must not have been paying close enough attention, but this is an office building and there are offices in it..."

**GAROFALO** "With some vacancies."

**OSBORNE-HOWES** "But it is in multi-family residential."

**KROUT** "Right. "B" zoning district is the old district that allows medical clinics, which are doctor's and dentist's offices and also hospitals, but does not allow other offices."

**OSBORNE-HOWES** "This would be a doctor's office, but clinics aren't allowed there?"

**GAROFALO** "There is an orthodontist in there now, isn't there?"

**KROUT** "An insurance agent or an architect would have to have General Office zoning, and that would have to have General Office zoning, plus a Conditional Use."

**OSBORNE-HOWES** "So, this General Office zoning with a Conditional Use allows for what is allowable now under the 'B' district, plus just an animal care, or would they have to have 'GO'?"

**KROUT** "There are other uses. Dale, I didn't notice this at the time, but in the conditions of the Conditional Use it looks like there is an attempt to restrict the two uses permitted in the 'B' district, plus animal care and General Office. We can't really use the Conditional Use to limit other uses that are allowed by right in the General Office. If there was an intent to restrict other uses, such as hotel or group homes, about the only other uses that are not permitted by right, large group homes or hotels or bed and breakfasts, or uses that are allowed by right in 'GO'. You would have to add the Protective Overlay to restrict those uses."

**OSBORNE-HOWES** "Just a comment that I have that really this is more of a major change than just talking about the addition of an animal clinic, and I guess I would be more supportive of a Protective Overlay. I would welcome comments. At this point, that is what I would support."

**PLATT** "I have to agree with Commissioner Osborne-Howes. This is a tough case, and I think it is a legitimate request, but it seems to me that the whole history of this particular spot has been one of trying to accommodate the fact that that little piece of ground sat there, and the Planning Commission has done it, and I don't like the idea, then, of opening the door up to starting to expanding it in the middle of what is a residential area, so I am inclined to vote no."

**GAROFALO** "I agree. I can't support this. I think this is too much of a change. I am familiar with the area there and I think it would be more of an encroachment in the area, so I am not going to support the motion."

**OSBORNE-HOWES** "I am not going to support the motion, but I sure would support, though, a Protective Overlay that would basically keep things as is, plus the addition of an animal clinic."

**GAROFALO** "Are there any other comments?"

**VOTE ON THE MOTION:** The motion failed with 6 votes in opposition (Osborne-Howes, Platt, Warner, Lopez, Garofalo and McKay) and 4 in favor (Johnson, Warren, Barfield and Michaelis).

**OSBORNE-HOWES** "Would it be appropriate at this time to offer the Protective Overlay, or would it be best to have a

deferral on this? Do we have enough information to do a Protective Overlay right now, or can we even ask if they would be at all interested?"

**KROUT** "I think you probably would want to hear from the applicant about that, and maybe Donna could even talk to them about it, how they could achieve that through the Conditional Use conditions."

**MILLER** "This is my case, Marvin. I wrote it that way."

**KROUT** "Oh, I'm sorry."

**MILLER** "I was trying to keep out the correctional placements and all of those other things."

**KROUT** "Yeah, and I think you can do that and limit it to uses permitted in 'B'. I would think you would want to add General Office uses so that it could be an insurance office or an architect's office as well as a doctor's office, and those would be the permitted uses. But it would take Protective Overlay plus the Conditional Uses to allow for the clinic."

**OSBORNE-HOWES** "That is what was on there."

**KROUT** "I think you can add the Protective Overlay to what is on the table."

**BARFIELD** "If we look here on No. 1 here, it clearly states at the bottom that 'at this mid-mile segment of central, all uses except this office building are residential uses'. We clearly have already made the exception there."

**WARNER** "That is obvious because there is a building there."

**BARFIELD** "I mean if it is a medical doctor, he could go in there without any zoning change at all."

**GAROFALO** "That's right. That is allowed."

**MCKAY** "Are you going to make a motion?"

**OSBORNE-HOWES** "Yeah."

**MOTION:** I move that we recommend to the governing body that the application be approved, subject to a Protective Overlay allowing uses in the current 'B' zoning, and the addition of animal care limited."

**OSBORNE-HOWES** moved.

**KROUT** "And General Office uses. Basically, that was what Dale was trying to achieve in Condition B of the Conditional uses."

**OSBORNE-HOWES** "What would that include? I want to make sure that we keep it pretty much to what is currently allowed now. You are saying that is insurance offices and the like. How is that different than what there is?"

**KROUT** "General Office means a typical office building that is other than doctors and dentists. That is what General Office is."

**OSBORNE-HOWES** "Okay. And I think they also offered maintenance of the fence."

**WARREN** seconded the motion.

**KROUT** "I think the maintenance of the fence is really covered in the Zoning Code. It is a violation for not maintaining the fence."

**OSBORNE-HOWES** "You know, I think I am going to change that. I want to try it first with no General Office."

**WARREN** "Why not General Office? General Office would be less than an apartment."

**WARNER** "I guess my question is, we have denied this request to this point. Now, is it our responsibility to sit here and think up some other zoning to handle it, or is it the applicant's responsibility to come back if he wants something different?"

**OSBORNE-HOWES** "No. It is not our responsibility. I am just offering another motion, and I am trying to keep it pretty close to...the fact that this first motion was denied, and clearly there isn't enough general support for all General Office. It was denied. So I am offering something that will allow this clinic."

**WARNER** "You are not even sure that there is any support for an animal clinic, the way the motion was."

**OSBORNE-HOWES** "No, I am not. That is absolutely right. And if there is not, we will know."

**KROUT** "It is a little bit difficult, if we ever get in court, to explain how a vet clinic is all right, but an architect's office would not be."

**WARREN** "Yes, it would be."

**WARNER** "It sure would."

**WARREN** "Can't you put General Office Use in there, Susan? General Office use is pretty light. To me, it is lighter than multi-family."

**OSBORNE-HOWES** "I just got through denying General Office use."

**WARREN** "A General Office district is different, though than general office use, isn't it Marvin?"

**KROUT** "General Office uses means office uses. If you only allow that to the vet clinic in 'B', then what you are doing is you are restricting out a few uses like hotel and bed and breakfast and large group homes."

**OSBORNE-HOWES** "Okay, we will change it then."

**MOTION:** Having considered the factors as contained in Policy Statement No. 10; taking into consideration the staff findings (The zoning, uses and character of the neighborhood: Surrounding land uses are: single family residential ("SF-6", Single family Residential) north of Central; multi-family residential ("B", Multi-family Residential) on the east and south; and a synagogue ("SF-6", Single family Residential) on the west. Central is a significant east-west arterial. At this mid-mile segment of Central, all uses except this office building and the synagogue are residential uses. The suitability of the subject property for the uses to which it has been restricted. The site is zoned "B", Multi-family Residential. This district permits a complete range of residential uses, medical offices and a few other public and civic uses such as church, day care, group home or convalescent care. The subject tract has been developed with a four-suite office type building which limits the range of uses available to the applicant under this zoning. The applicant could wait for another medical service use to rent the space. Extent to which removal of the restrictions will detrimentally affect nearby property: Approval of the "GO", General Office district request would potentially allow uses not permitted in the "B" district. Examples of such uses are general office, group residences, funeral home or hotel. Since all the vet clinic's services and facilities are required to be inside, nearby properties would notice little difference between a medical office and the vet clinic. Conformance of the requested change to the adopted or recognized Comprehensive Plan: The Wichita Land Use Guide depicts this site as appropriate for "high density residential" which permits densities in excess of 10 dwelling units per acre. Office uses are also considered to be appropriate buffer uses. Impact of the proposed development on community facilities: No negative impacts have been identified.) I move that we recommend to the governing body that the request be approved, subject to the following:

1. The site shall be developed and utilized in general conformance with the site plan submitted with this request.
2. Any violation of the conditions of approval shall render the conditional use permit null and void.
3. That Protective Overlay No. 73 be established which restricts the uses permitted on the site to uses permitted in the "B", Multiple-Family Residential zoning district, and only those "GO" General Office uses "animal care, limited" and "general office" uses as defined in the "Office, general:" definition contained in the Unified Zoning Code. Permitted office uses are the uses listed under "office, general" in the Unified Zoning Code.

**OSBORNE-HOWES** moved, **WARREN** seconded the motion.

**GAROFALO** "I am not going to support the motion because I am opposed to putting the animal clinic in there."

**BARFIELD** "We are still doing the same thing. We are still approving the property for General Office."

**GAROFALO** "Yeah, pretty much. This would include the vet clinic. Okay. If there is no further discussion, let's have roll-call vote on this."

**VOTE ON THE MOTION:** The motion carried with 6 votes in favor (Osborne-Howes, Johnson, Michaelis, Warren, Barfield and McKay) and 4 in opposition



(Platt, Lopez, Warner and Garofalo). Hentzen, Carraher, Wheeler and Marnell were not present.

**KROUT** "That passes 6-4. It will be sent on to the City Council for the final decision."

11. **A 99-37** - The City of Wichita seeks the annexation of properties, generally located north of 21<sup>st</sup> Street North and east and west of Hoover Road.

**KROUT** "This is a request for you to find that the latest annexation effort of the City Council is consistent with the Comprehensive Plan. This is in the area north of the Zoo where we have had some zoning activity recently in the 21<sup>st</sup> and Hoover area. It is an area where it is extending services. It is in the growth area and your adopted Comprehensive Plan recommends that you make the finding that it is consistent."

**MOTION:** That the Metropolitan Area Planning Commission find the unilateral annexation compatible with the adopted Comprehensive Plan.

**MCKAY** moved, **MICHAELIS** seconded the motion, and it carried unanimously (10-0).

**GAROFALO** "Is there any other business?"

**KROUT** "The next meeting will be three weeks from today, June 15."

**GAROFALO** "If there is no other business, is there a motion to adjourn?"

**MOTION:** That the Metropolitan Area Planning Commission be adjourned.

**LOPEZ** moved, **WARNER** seconded the motion, and it carried unanimously (10-0).

State of Kansas     )  
Sedgwick County    ) ss

I, Marvin S. Krout, Secretary of the Wichita-Sedgwick County Metropolitan Area Planning Commission, do hereby certify that the foregoing copy of the minutes of the meeting of the Wichita-Sedgwick County Metropolitan Area Planning Commission, held on \_\_\_\_\_, is a true and correct copy of the minutes officially approved by such Commission.

Given under my hand and official seal this \_\_\_\_\_ day of \_\_\_\_\_, 2000.

\_\_\_\_\_  
Marvin S. Krout, Secretary  
Wichita-Sedgwick County Metropolitan  
Area Planning Commission

(SEAL)